



South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

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SDAS Changes Focus to Serve More People with Disabilities

by Tim Neyhart

South Dakota Advocacy Services (SDAS) is the designated Protection and Advocacy agency for South Dakota. Every state and territory in the United States has an agency that is designated by the Chief Executive of that political unit to carry out the activities and responsibilities of the Protection and Advocacy (P&A) system. As part of its responsibilities, the P&A is required obtain public input on an annual basis. SDAS does this by conducting public meetings, holding events with other disability service agencies, holding listening sessions around the state, using electronic media, etc. SDAS conducts these activities in an effort to gather information from people with disabilities about the services they need from SDAS to address the disability-related issues that affect their lives. The information is then used by SDAS to develop program priorities for each fiscal year.

In South Dakota, the P&A has always received a large number of requests for services to address issues related to Special Education. SDAS has taken the public's requests for services in this area very seriously. Over the course of the last thirty-nine years, the agency has opened thousands of individual case service files and served large numbers of students in their efforts to obtain a free appropriate public education.



Congratulations Partners in Policymaking Class of 2016 (see p. 16)

In the last two years, SDAS has begun shifting its focus from heavy individual case representation in the area of Special Education to a more systemic approach. This means that SDAS will accept Special Education cases with the intent that the outcome of the case will affect more than a single student. The agency will be prioritizing its work to address the cases or issues that can potentially affect large numbers of similarly-situated students.

In practical terms, when a parent contacts SDAS requesting assistance with a Special Education issue, SDAS will evaluate the request for service to determine if that issue is one that would tend to be repeated or otherwise affect other students in that district. A sys-

temic issue may also arise where SDAS becomes aware of similar issues among several districts.

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This is a recent example of a systemic case. A student with disabilities was being sent home when the special education teacher was involved in another activity or was not available at the school. This student missed a total of nine weeks of instruction that school year as a result of the school's decision to send her home. SDAS filed a disability discrimination complaint against the school with the Federal Office for Civil Rights (OCR). OCR found the school district to be out of compliance with the law. OCR required the school district to revise its policies and practices related to sending children with disabilities home. The changes in the district's policies will impact several students in that district.

An example of an issue that impacts students in multiple districts is access to due process procedures to address suspension, expulsion, and other removal from public schools. SDAS has been very involved for the past two years in addressing these issues. SDAS is working to assure that all students removed from schools have had the chance to be heard in the correct forums so that they can maintain their right to access school services. SDAS will continue to focus on this issue for at least one more year.

In addition to working to identify case services that focus on systemic issues, other changes have been taking place within the agency. SDAS is, and has been, involved in work groups that were developed to address concerns related to abuse and neglect for people with disabilities. The Elder Abuse Task Force and the Emergency Intervention Work Group have identified changes and potential changes to rules and laws that affect people with disabilities.

Furthermore, the Department of Social Services and the Division of Developmental Disabilities are in the process of rewriting the State of South Dakota's applications for Home and Community Based Services Waivers, commonly referred to as HCBS. These waivers are designed to provide long-term care services for elders and people with disabilities. HCBS waivers are the way that the state agency establishes the services that Medicaid will pay for to support people receiving services from nursing homes, Community Support Providers, Family Support, etc. These waivers have several requirements, including due process procedures for people receiving services under the waiver, requirements for services in the least restrictive environment, requirements for receiving services in an integrated community based setting, and other rights-based matters that could require the support of an advocate.

Some of the requirements for new waivers are more specific than in the past and require a greater level of review. For example, one requirement in a waiver is that states should not pay for services in an institutional-like setting. As a result of these changes, SDAS has identified the need to focus its resources to address these issues in a more structured way. SDAS has undertaken extensive training for its

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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Can A Training Really Change Your Life?

by Sandy Stocklin Hook

YES --- Partners in Policymaking can change your life. In fact, in the last 24 years it has changed the lives of 588 South Dakotans. It will change the way you think and will impact others. It will help you grow. You will become Partners with community organizations, agencies, federal/state/county/local governments, schools, employers, and most importantly, with others with the same goals and challenges you have.

In November, South Dakota will begin its 25th year of this training. This innovative, competency-based leadership training program is designed for self-advocates, their family members, and parents of children with disabilities. The purpose of the program is two-fold: to teach best practices; and to teach competencies of influencing and communication.

The goal of the program is to educate participants to be active partners with those who make policy. Graduates are equipped with the necessary skills to make or influence necessary changes to systems and to laws. Partner graduates are changing the face of disability issues across the United States. They are long-term change agents who learn there are no quick fixes. The training teaches the participants how to achieve long-term successes.

Has the training changed lives? Here is what graduates are saying:

"Being told Partners will change my life blew me away. How can getting together once a month change my life? Boy, was I SO WRONG!"

"One thing that has really changed in me is my self-confidence. I now know that what I have to say is important and does matter. I alone CAN make a difference."

"I learned that everybody, no matter what color, what the disabilities, or what nationality they are, they deserve a chance to learn and to live a full, productive life."

"Having had the privilege to be a part of the Partners in Policymaking, I am happy to say that Partners in Policymaking is second to none in the struggle for the rights of developmentally disabled people."

Partners learn about current issues and best practices and become familiar with the policymaking and legislative processes at the local, state, and national levels. The overall goal is to achieve a productive partnership between people needing and using services and those in a position to make policy and law. Partners attend 2-day training sessions, six times a year. Each session is devoted to specific topics taught by nationally known presenters.

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staff in the area of monitoring. The Federal legislation that created the Protection and Advocacy systems provides for a monitoring authority. The monitoring authority affecting persons with developmental disabilities provides for "reasonable unaccompanied access to service providers This access is for the purpose of: (i) Providing information, training, and referral for programs addressing the needs of individuals with developmental disabilities, information and training about individual rights, and the protection and advocacy services available from the P&A system.... (ii) Monitoring compliance with respect to the rights and safety of individuals with developmental disabilities; and (iii) Access, including, but not limited to inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals with developmental disabilities or are accessible to them." 45 C.F.R. §1326.27(c), (c) (2). Similar authority for monitoring facilities serving individuals with mental illness is located at 42 C.F.R. §51.42(c). The monitoring process is designed to provide access to the P&A to go into facilities to meet with the people that receive services there. Information is solicited from the people living in the facility and by observing the conditions in the facility.

This monitoring process will be carried out in the Developmental Disabilities system, Mental Health system, and pos-

sibly in schools, jails, and prisons. It is possible that issues will be identified during the course of the monitoring. These issues will then be addressed through case or systemic advocacy activities. This monitoring process has been part of the authorizing law for a long time; it has been reemphasized with the passage of implementing regulations for the Protection and Advocacy for Developmental Disabilities (PADD) Program.

SDAS staff has received monitoring training through the National Disability Rights Network, the technical assistance provider identified by the federal funding sources to provide this type of training to P&A staff. The training culminates with an on-site training in Sioux Falls in mid-July. SDAS is working with members of the Association of Community Based Services to conduct a monitoring training at their facilities.

The changes described in this article are part of the long-term plan for SDAS. The changes are being designed to assure a larger number of people with disabilities will benefit from the finite resources allotted to South Dakota for Protection and Advocacy services. SDAS will continue to offer Information and Referral services and technical assistance to all callers.

If you have any questions about the information in this article, please call Tim Neyhart at 605-224-8294 for further clarification.

Tech Bytes

Children's Home Society shared this article regarding apps your children may be using. While it is important for all parents to monitor their child's Internet use and know how to protect their child, parents of children with disabilities may need to be extra cautious if their child tends to be easily persuaded by outside influences. Here are some simple steps to take:

- ◆ Have a conversation with your child about each app, and what your concerns might be.
- ◆ Check your child's phone and tablets on a regular basis for what applications are downloaded.
- ◆ Obtain the user name and password for the apps that might need monitoring.
- ◆ Limit phone and tablet use to certain hours (e.g., must be on the kitchen counter from 10pm-8am).

Apps You Need to Know About

The world of technology is ever-changing. Unlike in the past when parents didn't know how to work the VCR, not knowing how to work today's technology presents true risks to your child. The following are just a sampling of common apps that are being used by youth. Just because your child uses these apps doesn't mean they are engaged in risky behavior... but as a parent you should know the risks so you can educate your children. As with all technology, your best weapon is communication and monitoring. Know what your child is up to, turn off their access to wi-fi when you are concerned, and watch their emotional state for cues that something may be bothering them.

Whisper This app allows you to post secrets anonymously and to chat with other users in your geographic area.

Risks: Many children are drawn to communicating with strangers, feeling that their secrets are safer with them than with their friends. This app is a perfect tool for ill-intentioned strangers looking to connect with young people because it allows you to exchange messages with people nearest to you. Because of the proximity, anonymity can easily be lost.

YikYak All Yik Yak users are anonymous. They don't create a profile or account, but they can post comments that are accessible to the nearest 500 people within a 1-5 mile radius. A psychiatrist called this the most dangerous app he'd ever seen because it "can turn a school into a virtual chat room where everyone can post his or her comments, anonymously. Untruthful, mean, character-assassinating short messages are immediately seen by all users in a specific geographic area."

Risks: This app is causing problems in schools across the United States, with students maliciously slandering teacher, staff, and other students. In fact, several schools have now banned smart phones from campus because of this particular app.

Kik A free app-based alternative texting service that allows texts/pictures to be sent without being logged in the phone history. (Similar apps: Viber, WhatsApp, TextNow)

Risk: Makes it easier for your child to talk to strangers without your knowledge since it bypasses the wireless providers' short message services (SMS). Children also think they can "sext" without parents finding out. In addition, strangers can send your child a "friend request."

Snapchat Allows you to capture an image or video and make it available to a recipient for a specific time. After that time limit is up, the picture/video automatically disappears forever...or so Snapchat claims. (Similar apps: Poke, Wire, and Wickr)

Risks: Kids can receive (or send) sexually inappropriate photos. This app also makes kids feel like they can "sext" or send inappropriate pictures without consequences because the image will self-destruct automatically. The truth is that nothing sent over the internet disappears. There are always ways to retrieve and capture those images, such as taking a screen shot.

Vine Allows users to watch and post six second videos.

Risks: While many of the videos are harmless, porn videos do pop up into the feed, exposing your children to sexually explicit material. You can also easily search for/access porn videos on this app. Predators utilize this app to search for teens and find their location. Then they try to connect with them via other messaging apps.

ChatRoulette and Omegle These apps allow you to video chat with strangers.

Risks: Not only are users chatting with strangers, they could be chatting with a fake stranger. "Chat sites like Chatroulette and Omegle have done their best to produce systems that warns users when the people they are chatting to are potentially using fake webcam software, however developers still manage to slip under their radars with frequent updates." So a fifty-year-old man could set up a fake webcam and use images from a 15-year-old boy that looks like a teen celebrity to convince your child to send inappropriate pictures or get information about your child's location.

Tinder Users post pictures and scroll through the images of other users. When they think someone is attractive they can "flag" the image. If that person has also "flagged" them in return, the app allows you to contact them.

Risks: This app, and similar apps such as Down, Skout, Pure, and Blendr, are primarily used for hooking up.

Poof Hides other apps on your phone. You select which apps you would like to hide and their icons will no longer show up on your smartphone screen.

Risks: If children have apps that they want to keep hidden from their parents, all they have to do is download this app

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and “poof,” their screen is clear of any questionable apps. So, if you see the poof app on their phone, you may want to ask them what they are hiding.

Ask.fm This app allows users to interact in a question-and-answer format — with friends, peers, and anonymous users alike. The app is rated ages 13+ and is most popular in Europe but is catching on in the U.S.

Risks: Some kids have used the app for hurtful cyberbullying that has been linked to suicides, including the death of 12-year-old Rebecca Sedwick of Florida. British schools have sent home letters calling for students to stop using ask.fm because of its use in several cyberbullying incidents there, and its loose regulation and lack of monitoring.

Voxer This walkie-talkie PTT (push-to-talk) app allows users to quickly exchange short voice messages. They can have chats going on with multiple people at a time and just have to tap the play button to hear any messages they receive. Although it largely has an adult following, including some people who use it for their job, it’s becoming popular among teens who enjoy its hybrid style of texting and talking.

Risks: Hurtful messages from cyberbullies can be even more biting when they’re spoken and can be played repeatedly.

Poke Poke is Facebook’s app that, similar to Snapchat, promises that photos sent will “self-destruct” within seconds after they’re received.

Risks: While Poke isn’t nearly as popular as Snapchat, it is still gaining young users who can use it for sexting. Also like Snapchat, the images sent via Poke can be saved or viewed with certain workarounds. The App store rates it ages 4+ (but it is connected to Facebook, which is a 13+ site).

Tumblr Many children and young teens are also active on this 17+ photo-sharing app. It can also be used for sharing videos and chatting.

Risks: Common Sense Media says Tumblr is “too raunchy for tykes” because users can easily access pornographic, violent, and inappropriate content. Common Sense also notes that users need to jump through hoops to set up privacy settings — and until then, all of a user’s photo and content is public for all to see. Mental health experts say that Tumblr can be damaging to adolescents’ mental health because it tends to glorify self-harm and eating disorders.

Instagram This hugely popular photo-sharing site is owned by Facebook, so you may be more familiar with it than with other photo-sharing apps. Users can add cool filters or create collages of their photos and share them across Facebook and other social media platforms.

Risks: The app is rated 13+ and may be slightly tamer than Tumblr, but users can still find mature or inappropriate content and comments throughout the app (there is a way to flag inappropriate content for review). “Trolls” — or people making vicious, usually anonymous comments — are common. A user can change the settings to block their location or cer-

tain followers, but many users are casual about their settings, connecting with people they don’t know well or at all. Check out connectsafely.org’s “A Parents’ Guide to Instagram.”

Shots of Me Justin Bieber has invested in this 12+ “selfie-only” photo-sharing app in part because he was attracted to its “anti-trolling” aspect; it does not have a comment section under photos posted on the app. Instead of a public comment area, the app has a direct-messaging feature where users can only send private messages to one another.

Risks: The anti-trolling feature might also help ward off cyberbullying among teens who like to put meanness on display (but teens could still be nasty via private message). The app does show a user’s location and how long ago a photo was added unless those features are managed in the app’s settings. Shots of Me is currently available only for Apple devices. It’s not the only “selfie-centered” photo-sharing app — another one called Frontback has a split screen that allows users to simultaneously share a regular photo and a selfie (think: a photo of the ocean and a selfie of the photographer sitting happily in a beach chair), and easily reveal their location.

Jailbreak Programs and Icon-Hiding Apps These aren’t social media apps — and they’re confusing — but you should still know about them (especially if you have a tech-savvy teen or have had to take away your child’s mobile phone privileges because of abuse).

Risks: “Jailbreaking” an iPhone or “rooting” an Android phone basically means hacking your own device to lift restrictions on allowable applications — meaning, the user can then download third-party apps not sold in the App Store or Google Play store (read: sometimes sketchy apps). It’s hard to say how many teens have jailbroken their mobile device, but instructions on how to do it are readily available on the Internet. Cydia is a popular application for jailbroken phones, and it’s a gateway to other apps called Poof and SBSettings — which are icon-hiding apps. These apps are supposedly intended to help users clear the clutter from their screens, but some young people are using them to hide questionable apps and violent games from their parents. Be aware of what the Cydia app icons look like so you know if you’re getting a complete picture of your teen’s app use.

Facebook and Twitter Do all these new social media apps mean that Facebook and Twitter are in decline? A 2013 survey by Pew Internet found that U.S. teens have “waning enthusiasm” for Facebook — in part because their parents and other adults have taken over the domain and because their peers engage in too much “drama” on the site. But Facebook still remains the top social media site among U.S. teens, who say that their peers continue to stay on the site so they don’t miss anything happening there. Your child may keep a profile on Facebook but be much more active on newer platforms.

Meanwhile, Twitter use is rising among teens. The 2013 Pew survey found that 24 percent of online teens are on Twitter, up from 16 percent in 2011.

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REVUP - Register, Educate, Vote, Use your Power!

by C.J. Moit

Everyone has the right to vote, including people with disabilities. Two thousand sixteen (2016) is presenting itself as an extraordinary election cycle. For that reason, as with any election, it is important that all voters have their voices heard. To help spread the word that disability votes count, 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 have joined the REVUP nationwide voting awareness campaign. Many activities such as Public Service Announcements (PSAs), voter registration booths, and provision of voter information materials are planned throughout summer and fall to help raise awareness that *all* voices count.

The campaign will conclude with a REVUP Voter Registration Event hosted by SDAS. The event is going to be held at Main Street Square in Rapid City on October 17, 2016, from 4:00-6:00 PM. Featured guests at the event include Ms. Wheelchair America, Dr. Alette Coble-Temple, and Ms. Wheelchair South Dakota, Kristi Eisenbraun. People of all abilities are welcome to come and learn why all voices are important in the elections and about their voting rights. People can also use this opportunity to register to vote.

Once individuals are aware of their right to vote, it is important to ensure that barriers are removed from their ability to do so. Voters with disabilities have the right to accommodations when registering to vote and voting. Following issues that arose during the 2000 general election, the **Help America Vote Act (HAVA)** was passed in 2002 to make sweeping reforms to the nation's voting process. HAVA addresses improvements to voting systems and voter access. HAVA mandates that the Elections Assistance Commission (EAC) test and certify voting equipment, maintain the National Voter Registration form, and administer a national clearinghouse on elections that includes shared practices, information for voters, and other resources to improve elections. Under HAVA, the **Protection and Advocacy for Voter Access (PAVA)** Program was established, thus authorizing Protection & Advocacy (P&A) agencies to assist in the effort to ensure full participation in the electoral process. Participation includes registering to vote, casting a vote, and accessing polling places.

The Department of Justice has produced an Americans with Disabilities Act (ADA) checklist with guidelines on what is needed to make a polling place accessible, at <https://www.ada.gov/votingchecklist.htm>. When looking at Polling Place accessibility, there are many ways to ensure any individual can vote without obstacles. The most obvious are accessible parking, ramps, wider doorways, and automatic door

openers. This is only a small representation of what accessibility truly means. Accessible parking does not stop at a designated spot. It includes curb cuts and walkways clear of debris, garbage, and ice and snow in winter. Once inside the polling place, persons need to be able to navigate to the poll worker and the voting booth or machine easily. Booths/tables need to be placed far enough apart to allow a person to pass through. Tables need to be at a correct height for a wheelchair to fit under.

As part of the HAVA mandate, all states were to certify and purchase accessible voting machines. These machines allow individuals with visual, hearing, dexterity, and cognitive impairments to vote independently and privately. In South Dakota, the *AutoMark Voting Device* was chosen. Although it was purchased to enable individuals with disabilities to vote, anyone can use the device. There are other ways to assist individuals with disabilities who may not wish to use the AutoMark. Items as simple as a magnifying glass for individuals with low vision, or a pen/pencil grip for an individual with difficulties in dexterity or grip, may be employed to help people engage in the voting process. If a door does not have an automatic opener, a person to open the door would not only assist individuals with disabilities, but would be there for anyone needing assistance. Voters also have the right to ask whomever they would like to assist them in filling out their ballot privately.

Accessibility does not only pertain to Election Day. When a person with a disability registers to vote, he or she has the right to be able to do it in the same way as individuals without disabilities. A person with a disability can request an accommodation, such as being provided a voter registration form in large print or having someone assist him or her in completing the form. If the registration form is available to be printed or filled-out online, a person who utilizes assistive technology software should be able to access the same information as the general public.

HAVA started taking down barriers making it easier for all individuals with disabilities vote. Now is the time as United States citizens to make sure people with disabilities' voices are heard.

SDAS is conducting a survey on polling place accessibility. Please go to the SDAS website, www.sdadvocacy.com, or click or type in <https://www.surveymonkey.com/r/PollingPlace> to complete the survey.

“Unique Needs” Revisited New Decision from the SD DOE

by John A. Hamilton

In the previous issue of the *South Dakota Report* (Volume 31, Issue 2), SDAS published an article entitled, “*What Does it Mean to Serve a Child’s Unique Needs? It Means Disability Classification is Irrelevant.*” The article was prompted by calls and other information SDAS received wherein school districts were limiting special education services to the educational issues directly-related to a child’s special education classification. The article explained that limiting services to those directly relating to the child’s classification runs counter to the language of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and its federal regulations, federal policy, a letter from the South Dakota Office of Special Education, and case law.

The prior article shared how one of the stated “purposes” of the IDEA 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). IDEA requires schools to evaluate in all areas of suspected disability. The regulations require that schools “must ensure in evaluating each child with a disability ..., the evaluation is sufficiently comprehensive to identify *all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.*” 34 C.F.R. §300.304(c)(6) (emphasis added). “Special Education” is defined, in part, as “specially designed instruction, at no cost to the parents, to meet the *unique needs* of a child with a disability” 34 C.F.R. §300.39 (emphasis added). The regulations refer repeatedly to meeting each child’s unique needs.

The prior article also shared federal policy and case law describing how a student’s IEP services must be based on the child’s unique needs. For example: “[D]ecisions regarding the provision of services that are appropriate for an individual child must be based on the child’s unique needs and not on the disability category in which the child is classified.” *Letter to Anonymous*, 37 IDELR 126 (OSEP February 12, 2002). The prior article also referenced a letter from the South Dakota Office of Special Education from 1999, stating in part: “The program is to be individualized based upon the student’s unique needs. Therefore, a program cannot be designed solely upon the disabling condition under which the child is

eligible for special education; but rather must be based upon the specific educational needs as determined through the evaluation process and by the placement committee.”

The previous article described a clear roadmap of a district’s responsibilities for meeting each child with a disability’s unique needs under IDEA. The information shared in that article also described how some districts have taken the position that services are not required beyond the particular disability classification. One may recall the following example from that article:

- ♦ A child with a Specific Learning Disability (SLD) in Math also has a diagnosis of Dyslexia, but the Dyslexia does not qualify as an SLD under South Dakota rules because there is not a large enough discrepancy between intelligence and achievement scores in reading. The parent was told the district would not address the Dyslexia because it is unrelated to the SLD in math.

SDAS subsequently filed a State Complaint regarding that child’s situation, with one of the issues being whether the district failed to develop an IEP that met all of the student’s unique needs.

New Response on “Unique Needs” from South Dakota Special Education Programs Office

The South Dakota Special Education Programs Office issued its State Complaint decision on June 17, 2016, finding the particular district out of compliance with IDEA. The decision noted that special education and related services are to be individually determined based on each child’s unique needs, citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982). It referenced the definition of “special education” as set out above, stating, “Both the amount and type of services that ensures FAPE depends on the child’s identified needs as defined in the IEP by the IEP team. The unique needs of a student with a disability encompass more than a mastery of academic subjects.”

The State Complaint decision also stated: “Part B of IDEA and final regulations do not impose any limitation of services to be provided based on the areas of severe discrepancy. IEP services are based on the needs of the whole child,

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Intersectionality Problems with Gendered Disability Discrimination

Thomas E. Simmons*

Title I of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in the context of employment, but it has not always worked flawlessly. In fact, empirical data has suggested that its effect on overall employment for individuals with disabilities has been neutral to negative. The ADA has worked even less well for women with disabilities than for men. Why would this be so? Professor Jennifer Bennett Shinall's forthcoming law review article, *The Substantially Impaired Sex: Uncovering the Gendered Nature of Disability Discrimination* considers this question.¹ In answering it, she confronts the widespread problems of what legal scholars call "intersectionality."

In the twenty-six years now since the ADA was enacted by Congress and signed by President George H.W. Bush in 1990, men with disabilities have fared better in the job market than women.² Several labor economists have demonstrated this fact empirically. One leading study found that following the passage of the ADA, the average number of weeks worked per year for women with disabilities declined more than the average number of weeks worked for men with disabilities.³ Another, examining the impact of state disability discrimination laws, concluded that in terms of workers with

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not just the child's identified disability." (Citing *Letter to Anonymous*, 51 IDELR 251 (OSEP 2008)). Because this particular district was not addressing the student's Dyslexia, the district was found out of compliance for failing to consider all the unique needs of the student in the development of the IEP. As a result, the district must take corrective action, including providing training in developing an IEP to meet the unique needs of students with disabilities for all administrators and personnel involved in determining eligibility and drafting and implementing IEPs. The district must also undergo a review of its policies and procedures on determining eligibility and meeting the unique needs of students with disabilities.

Additional Federal Policy Guidance

The OSEP Policy Letter cited in the State Complaint decision, *Letter to Anonymous*, 51 IDELR 251 (OSEP 2008), provides a very interesting discussion of this topic, specific to students with Specific Learning Disabilities. In the scenario presented to OSEP, the local school district utilized the "severe discrepancy" model to evaluate students for specific learning disabilities (the model used by most districts in South Dakota). OSEP clarified that use of a severe discrepancy model "should be just one part of a multi-factored evaluation." OSEP stated, "The public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 CFR § 300.8; and the content of the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities). Further, *no single*

measure or assessment may be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR § 300.304(b)(2) [emphasis added]."

OSEP further stated, "The Department's long-standing policy is that special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified."

OSEP concluded: "In applying the above requirements, each public agency must ensure that each child with a disability is provided with a program of special education and related services that will enable the child to be involved and progress in the general curriculum; that is, the same curriculum as for nondisabled children. If an LEA elects to use a severe discrepancy and assigns point values to particular areas based on a formula, there is nothing in IDEA or the Part B regulations that would require a public agency to make determinations about the services that a child with a disability must receive based on the assigned point values." "Thus, a district may provide reading or language services to a student with a specific learning disability even if the student shows a discrepancy between intellectual ability and achievement only in the area of mathematics."

While this policy letter happened to address the exact situation presented in the State Complaint, it is important to remember that the concept is universal. In other words, it does not matter what a given child with a disability's special education classification may be; services must always be based on each child's unique needs.

If parents continue to encounter districts claiming they cannot or will not provide services beyond those linked to the child's disability classification, parents should ask the district what it is basing its position upon and request a copy of whatever the district claims to use as its authority. SDAS also recommends the parents contact SDAS for assistance in addressing this issue.

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disabilities, women's earnings declined more than men's earnings.⁴ Both studies are unfortunately consistent with other studies which have uniformly concluded that the ADA's impact on the employability of individuals with disabilities generally was either neutral or negative.⁵ A possible explanation of these disappointing results in general might be that the costs imposed on employers (such as providing reasonable accommodations) outweigh any compliance incentives (e.g., avoiding an ADA lawsuit). An explanation for why women with disabilities would suffer more negative consequences than men is more elusive.

Discrimination is frequently multidimensional. Consider an older wheelchair-bound African-immigrant Islamic woman applying for a job in a paint brush factory. If she is otherwise qualified for the job and is turned down in favor of a younger white male applicant, what might a deeper study of the employer's bias reveal? Could prejudices against individuals with disabilities, Blacks, immigrants, women, older persons, and Muslims have combined forces to defeat an objective hiring decision? Restating the question: Can we concede that workers with more than one traditionally disadvantaged characteristic will frequently face greater bias in the workplace than those with a single characteristic?

The overlapping discriminatory effects on individuals with membership in several protected classes are known as intersectionality. Intersectionality theorists claim that the effect of having more than one protected characteristic is not merely additive but multiplicative. As Professor Shinall explains:

Intersectionality problems may arise whenever an individual possesses multiple, traditionally disadvantaged identities or minority statuses. Intersectionality implies that employment discrimination is compounded or exacerbated in the presence of multiple protected statuses; in other words, the whole discrimination experienced by a multiple-protected-status individual is more than the sum of its parts.⁶

The heart of Professor Shinall's article extrapolates from a large data sampling of nearly ten years' worth of Equal Employment Opportunity Commission (EEOC) filings from across the country.⁷ Considering the absolute number of ADA charges filed each year by sex, women on average file just slightly more charges each year than men. However, more men work full-time than women. The ADA claim gender gap widens considerably when this difference between men and women's full-time employment rates is taken into account. Using a metric of ADA charges per full-time worker reveals that female workers file 42 percent more claims than men. In the most recent year of data, the rate is more than 50 percent higher.

This gender differential is even more dramatic given the fact that some disabilities arise on the job (i.e., from workplace injuries). Women typically work in less risky jobs than men. So women should, to some degree, be filing fewer ADA claims than men insofar as they are less likely to develop dis-

abilities from on-the-job accidents. In addition, the overall labor force penetration gap between men and women should result in even fewer ADA claims by women. There are fewer female workers *overall* in the labor market – 14 percent fewer according to recent labor statistics.⁸

“Indeed, after viewing this sizable, yet previously undocumented, difference between men's and women's charge-filing rates, one question looms large – *why* are disabled women filing more ADA charges per worker?” asks Shinall. She then posits and explores two potential answers.⁹

First, it may be that women file more ADA claims than men because women are more likely to be incapacitated by an impairment. Second, women may be more likely to complain about a disability than men. If neither of these explanations can be supported, then intersectionality may be to blame. Perhaps women file more ADA claims because they simply encounter more disability discrimination than men.

By carefully sifting the data, Shinall is able to deconstruct and dismiss the first two possible explanations. She concludes that the multiplicative effect of gendered discrimination coupled with bias against individuals with disabilities is the causative agent for higher levels of ADA claims by women. Women with disabilities file more ADA claims than men with disabilities because women suffer greater rates of disability discrimination than disabled men. Women with disabilities also suffer greater rates of disability discrimination simply because they are women.

In evaluating the validity of the first hypothesis – that disabilities themselves manifest more frequently in women – it is first necessary to identify conditions which disproportionately affect women. Women obviously experience pregnancy with starkly more frequency than men and some pregnancies do result in substantially limiting impairments.¹⁰ Yet, under one percent of ADA claims by women involve maternity. Other impairments, such as rheumatoid arthritis, also occur more frequently with women. Other impairments (like hearing loss) are statistically more common with men. Shinall's analysis of government statistics reveals that the percentage of men who report one or more functional limitations is slightly higher than women.¹¹ Thus, she concludes, women are no more likely to experience a disability than men.¹²

The second hypothesis – that women are more likely to complain about a disability – also lacks evidentiary support. Stereotypes suggest that women complain more than men. The psychological literature does not bear this out.¹³ Still, perhaps men are more hesitant to raise the issue of a disability with a supervisor than women. If this were true, then men's disability discrimination charges would turn out to be, on average, more meritorious than women's, since men would be filing EEOC complaints only in more egregious cases. The data refutes this idea as well. No systematic difference can be discerned between the outcomes of men's and women's ADA claims; neither sex tends to file more meritorious claims than the other.

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The Final Rule

An Opportunity for Change ...

by Emily Garcia

At South Dakota Advocacy Services, we strive to assist our clients in living the life of their choosing. Staff advocate for individuals and families when they feel someone has violated their right to access the lifestyle they desire. The people served by SDAS are often required to ask for freedoms that most of us take for granted, such as the ability to: choose where we live; eat food when and where we want; decorate our home how we see fit; or go to the movie theater.

Adults with disabilities are often told where they can live and with whom. Strict diets are imposed based on convenience and a perceived “what’s best” for the person. People are subject to living in prescribed, stale, and sterile environments. When an opportunity arises to do a leisure activity, it is done with a group of other adults with disabilities. Imagine how it would feel if you were subjected to this kind of direction in your life.

The Centers for Medicare and Medicaid Services (CMS) has heard and listened to concerns voiced by self-advocates and families across the country regarding this issue. CMS has mandated requirements for settings that receive home and community-based services (HCBS) funding. CMS is calling this the HCBS “Final Rule.” CMS intends that with the Final Rule, individuals in settings such as group homes, assisted living centers, supported apartments, etc., shall be able to live their lives integrated in the individual’s community.

CMS has stated the following about settings (Centers for Medicare & Medicaid Services, 2014):

“The final rule requires that all home and community-based settings meet certain qualifications. These include:

- ♦ The setting is integrated in and supports full access to the greater community;
- ♦ Is selected by the individual from among setting options;
- ♦ Ensures individual rights of privacy, dignity, and respect, and freedom from coercion and restraint; optimized autonomy and independence in making life choices; and
- ♦ Facilitates choice regarding services and who provides them.

The final rule also includes additional requirements for provider-owned/provider-controlled home and community-based residential settings. These requirements include:

- ♦ The individual has a lease or other legally enforceable agreement providing similar protections;
- ♦ The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;

- ♦ The individual controls his/her own schedule including access to food at any time;
- ♦ The individual can have visitors at any time; and
- ♦ The setting is physically accessible.”

CMS has issued a loud and clear message that individuals with disabilities should have access to systems that support a full, inclusive lifestyle. Every individual has the right to seek out a support network that provides appropriate freedoms that most of us take for granted. For SDAS, it is encouraging that a federal agency recognizes this and has taken action to compel states to provide systems that support individual choice.

CMS is allowing states a five-year window to transition into the changes. The State of South Dakota Departments of Human and Social Services (DHS/DSS) have developed a Transition Plan that illustrates how the State plans to bring South Dakota’s service delivery system into compliance with the Final Rule. While the Transition Plan has already been drafted by DHS/DSS, there will be a number of public comment periods where people can learn more about the Final Rule and the Transition Plan.

It is during these public comment periods that *you can offer your voice* in how you believe the State of South Dakota should comply with the Final Rule. The State is required to respond to suggestions or concerns brought by members of the public. If you would like to make your voice heard with regard to the State of South Dakota’s plans to transition to support more opportunities for people to live and work in integrated settings, please visit the website listed below. To learn more about the public comment periods or to be informed of important dates, please visit the Department of Social Services’ website listed below.

“We can choose to be affected by the world, or we can affect the world.” – Heidi Wills

South Dakota HCBS State-Wide Transition Plan - http://dss.sd.gov/docs/medicaid/hcbs_revised_stp.pdf

South Dakota Department of Social Services, HCBS - <http://dss.sd.gov/medicaid/hcbs.aspx>.

Bibliography:

Centers for Medicare & Medicaid Services. (2014). *Fact Sheet: Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule*. Baltimore.

**Reminder - Applications for Year 25 of
Partners in Policymaking are due
September 20, 2016!**

SDAS Spring Legal Clinic

by John A. Hamilton

South Dakota Advocacy Services sponsored and held its second Legal Clinic on April 22, 2016, at the Ramkota in Sioux Falls. A Legal Clinic is an opportunity for the public to receive free legal advice from attorneys knowledgeable about particular areas of law. While SDAS' initial Legal Clinic last August focused solely on special education issues, the Legal Clinic held April 22 provided the public with free legal advice on all disability-related issues.

South Dakota Advocacy Services recruited volunteer attorneys to donate their time at the clinic to meet with and provide legal advice to individuals and families on disability-related issues. The volunteer attorneys involved in this event were Alison Ramsdell, Diana Ryan, and Kevin Koler from the United States Attorney Office in Sioux Falls, Elizabeth Overmoe from the State Bar of South Dakota, and Craig

Eichstadt from the Office of Attorney General in Pierre. SDAS thanks these attorneys for giving their time to this Legal Clinic. SDAS attorneys, Kate Dykstra, Gail Eichstadt, and John Hamilton also participated.

Those conducting intake were Cole Uecker, SDAS CAP Director; Carrie Geppert, SDAS PAAT Director; and Amber Hardy, law student at University of South Dakota School of Law. SDAS PAVA Director, C.J. Moit, assisted with an information table.

SDAS PADD Director, Emily Garcia, organized and publicized the Legal Clinic. Twelve individuals or families attended the Legal Clinic to receive free advice from one of the attorneys. SDAS is tentatively planning on holding a similar event in Pierre in September in conjunction with Project Connect.



Elizabeth Overmoe, Alison Ramsdell, and John Hamilton



Craig Eichstadt (l) and Gail Eichstadt (r)



Kate Dykstra and Carrie Geppert



Amber Hardy and Cole Uecker



C.J. Moit



Kate Dykstra



Diana Ryan

THE DIFFERENCE BETWEEN SERVICE AND SUPPORT ANIMALS

by Marie McQuay

Dogs, cats, miniature horses, snakes, pigs, monkeys, rodents! Are they service animals, simply support animals, or neither, and how do you know which are which?

Service animals and emotional support animals may be used by people with disabilities for a variety of reasons. There are different definitions and rules that apply to service and support animals in different settings such as public facilities, employment, housing, education, transportation, and air travel.

A **service animal** is defined by Titles II and III of the Americans with Disabilities Act (ADA) as “**any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or other mental disability.**” Tasks performed by a service animal can include pulling a wheelchair, retrieving dropped items, alerting a person to sounds, reminding the person with a disability to take medication, alerting to high or low blood sugar, pressing an elevator button, alerting the person to an oncoming seizure, among other things. **Comfort animals, therapy dogs, and emotional support animals are not considered service animals under Titles II and III of the ADA.** Any other species or animals, whether wild or domestic, are not considered service animals. **Service animals are limited to dogs under Titles II and III of the ADA.** However, individuals with disabilities may be allowed to use **miniature horses** if the miniature horses have been individually trained to do work or perform tasks for the individual’s benefit. If a person with a disability has a note from a doctor stating he or she needs an animal for emotional support, the animal *is not* considered a service animal for this purpose. The letter from a doctor does not turn the animal into a service animal. The animal has to be trained to perform a task for the person with a disability in order to be considered a service animal.

Examples of animals that have been specially trained to perform a task for the person with a disability under the ADA are as follows:

- ♦ Guide dog or Seeing Eye Dog (see <http://www.seeingeye.org>) – a carefully trained dog that serves as a travel tool or navigational instrument for persons who are blind or with severe visual impairments.
- ♦ Hearing or Signal Dog – a dog that has been trained to alert persons with disabilities who are deaf or have a significant hearing loss to sounds that occur, such as a doorbell ringing, a buzzer buzzing, or a horn honking.
- ♦ Psychiatric Service dog – a dog that has been trained to perform tasks that assist individuals with disabilities to discern the onset of psychiatric occurrences and to help lessen the effects by calming the individual. Some of

these tasks include reminders to take medicine, searching rooms for safety issues, turning lights on for individuals who may suffer from post traumatic stress disorder, intervening when individuals suffering with dissociative identity disorder begin to self mutilate, and to keep individuals who may become disoriented from dangerous situations and places.

- ♦ SSigDOG (sensory signal dogs or social signal dog), a dog that is trained to assist individuals with autism by calming and comforting them, distracting them from performing repetitive motions such as hand flapping, and keeping them from dangerous situations and places.
- ♦ Seizure Response Dog – a dog trained to assist individuals with epilepsy or other seizure disorders. This dog can alert the individuals that a seizure is coming on so that they can sit down, and this action can keep individuals from falling and hitting their head or injuring themselves in other ways. The dog can also help them move to a safer place, stand guard over them while the seizure is occurring, or go for help.

As indicated previously, service animals are limited to dogs under Titles II and III of the ADA. Reasonable modifications in policies must be made, however, to allow the individual to utilize miniature horses if these horses are trained to do work or perform tasks for the individuals with disabilities.

Emotional Support Animals or Comfort Animals may be used in a medical treatment plan as therapy animals for people with disabilities. They *are not* considered service animals under the ADA. Support animals can provide companionship to alleviate loneliness and may help with depression, anxiety, or certain phobias. They do not have special training to perform tasks to assist individuals with disabilities. They are used to improve physical, social, emotional, and/or cognitive functioning. Some states have laws defining therapy animals, but because these animals are not limited to working with individuals with disabilities, they are not covered by federal laws protecting the use of service animals.

Where Service and Support Animals Are and Are Not Allowed

Under Titles II and III of the ADA, only service animals are allowed in public facilities. Even if a business or public program has a “no pets” policy, which is perfectly legal, it cannot deny entry to a person with a service animal. Service animals **are not** considered pets. An individual with a service animal cannot be asked about the nature or extent of the disability. The two questions that can be asked are:

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Service/Support Animals

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- 1) Is the animal required because of a disability?
- 2) What work or task has the animal been trained to perform?

Public accommodations or facilities may not ask for proof or documentation that the service animal is trained, certified, or licensed as a service animal. They also cannot ask the individual with the service animal to pay a surcharge, even if other individuals accompanied by pets are required to pay fees.

Under the ADA, a hospital generally must allow service animals in patient rooms or anywhere in the hospital that the public and patients are allowed. The exception to this is that religious hospitals are exempt unless they receive government funding. If the patient is unable to care for the service animal, the hospital must give the patient an opportunity to arrange to have a family member or friend come to the hospital to provide care services for the service animal. If the patient cannot make arrangements for someone to provide care for his or her service animal, the hospital may put the service animal in an animal shelter until the patient has been released or make other arrangements for care of the service animal.

Employment discrimination because of a disability is prohibited by law, and employers are required to provide reasonable accommodations. The Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA (Title I), but it does not have a specific regulation defining service animals. Because there is no definition under Title I, employers may have to allow animals that do not meet the Titles II and III definition as a reasonable accommodation, such as a therapy or emotional support animal. If the disability is not noticeable and/or the reason the animal is needed is not plain, the employer may request documentation to verify the existence of a disability and how the animal will help the individual to perform his or her job. Service and emotional support animals may be banned from the workplace if they constitute either an undue hardship or a direct threat, such as safety in the workplace.

The Fair Housing Act (FHA) protects individuals with disabilities from discrimination in securing housing. Landlords and homeowner's associations are required by law to provide reasonable accommodations to individuals with disabilities so that they have equal opportunity for enjoyment and use of housing. Emotional or support animals that do not qualify as service animals under the ADA may qualify as a reasonable accommodation under FHA. If the individual with a disability uses a service animal or emotional support animal, a reasonable accommodation could be to waive a no-pet rule and a pet deposit. The animal is no longer considered a pet if it qualifies as a service animal or emotional support animal. A landlord or homeowner's association cannot ask the housing applicant if a disability exists, the extent of the disability, or the nature of it. If an individual, however, requests a reasonable accommodation, he may be asked to certify in writing (1) that the individual or member of his or her family is a person with a disability; (2) the need for the

animal to assist the individual with the disability; and (3) that the animal actually assists the individual with the disability. If you have questions or want to file a complaint, you can contact the U.S. Department of Housing and Urban Development at 1-800-669-9777.

The ADA permits a student with a disability to have a service animal at school. Emotional support animals, therapy animals, and companion animals are usually not allowed to accompany students with disabilities to school. However, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act allow a student to use an animal that **does not** meet the definition of a service animal (*i.e.*, emotional support animals, therapy animals, companion animals) if the IEP team or Section 504 team determines on an individual basis that the animal is necessary for the student to receive a free appropriate public education. Schools should be mindful, however, that it is the student's right under the ADA to use a service animal in school, and use of a service animal is not dependent on the decision of an IEP or 504 team.

Postsecondary education settings are much the same. Under the ADA, universities and colleges must allow individuals with disabilities to bring service animals into all areas that are open to the public and other students. Individuals with disabilities who use service animals should contact the disability coordinator at the university or college to see if the educational institution has a policy requiring such persons to register as a student with a disability. Colleges and universities may require proof that the service animal has vaccinations as required by state or local laws, but they may not require documentation about the animal's training or certification.

Public and private transportation providers must abide by the laws that cover a person traveling with a service animal. The laws apply to subways, fixed-route buses, Paratransit, rail, light-rail, taxicabs, shuttle, and limousine services. The individual with a disability using a service animal cannot be forced to sit in a certain area. No additional fees can be charged because the individual uses a service animal and the individual does not have to give advance notice that he or she will be traveling with a service animal.

The final area where questions arise about service and companion animals is air travel. Commercial airlines do not have to comply with the ADA. The Air Carrier Access Act (ACAA) is the federal law that protects the rights of individuals with disabilities in air travel. The ACAA requires airlines to allow service animals and emotional support animals to accompany the individual with a disability in the cabin of the aircraft.

Air carriers are allowed to ask for identifications cards, written documentation, physical evidence such as harnesses or tags, or verbal assurance from the individual with a disability that the animal is a service animal. If uncertain, airline personnel may also ask what tasks or functions the animal performs for the individual with the disability, what the

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Intersectionality

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By process of elimination, then, Professor Shinall convincingly concludes that women with disabilities simply encounter greater rates of disability discrimination on account of their sex.¹⁴ Moreover, her analysis demonstrates that as instances of disability discrimination increase, the likelihood of sex discrimination also increases. This is intersectionality demonstrated empirically. Sex discrimination and disability discrimination are not merely additive; they are compounding. Women working in male-dominated industries like construction, for example, file 176.4% more ADA charges per worker than men.¹⁵ This is not because women have more disabilities than men, nor can it be explained on the basis that women are more willing to file an ADA claim than men. This is because of sex discrimination.

These are sobering conclusions in view of the fact that neither Title VII nor the ADA account for this social reality. Both acts require strict categorization of claims, meaning one cannot claim discrimination based on sex *and* disability in either a Title VII or an ADA claim. The devastating effects of sex discrimination's intersection with disability discrimination merit further study. Discrimination law reform should take account of intersectionality, and it should do so with some urgency.

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

¹ Jennifer Bennett Shinall, *The Substantially Impaired Sex: Uncovering the Gendered Nature of Disability Discrimination*, 101 MINNESOTA LAW REVIEW --- (2017) (forthcoming), available at <http://ssrn.com/abstract=2759457>.

² Pub. L. 101-336, 104 Stat. 327, enacted July 26, 1990, codified at 42 U.S.C. § 12101 *et seq.* (2015); Shinall, *supra* note 1, at 6.

³ Daron Acemoglu and Joshua D. Angrist, *Consequences of Employment Protection? The Case of the Americans with Disabilities Act*, 109 J. POL. ECON. 915, 920-57 (2001).

Service/Support Animals

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animal has been trained to do for the person, or how the animal performs the tasks for the person.

Individuals with disabilities who must travel with an emotional support animal or psychiatric service animal may be asked to provide documentation to prove that they have a disability and the reason the animal must travel with them. They should also contact the airline ahead of time to find out exactly what kind of documentation the airline requires.

Miniature horses, pigs, and monkeys may be considered service animals under the ACAA. The airline must make a decision based on factors such as the animal's size and weight, state and foreign country restrictions, whether the animal could pose a threat to the health or safety of others, or whether the animal might cause an alteration to cabin service.

⁴ Kathleen Beegle and Wendy A. Stock, *The Labor Market Effects of Disability Discrimination Laws*, 38 J. HUM. RESOURCES 806, 810-59 (2003).

⁵ See Shinall, *supra* note 1, at 13 n. 52 (listing studies).

⁶ *Id.* at 4.

⁷ *Id.* at 18. The data included every charge filed between 2000 and 2009 but because of differences in the way the EEOC itself collected the data, most of Shinall's analysis focuses on the 2000-2006 time period. *Id.* The data was obtained through a Freedom of Information Act request. *Id.*

⁸ *Id.* at 20.

⁹ *Id.* at 21 (emphasis in original).

¹⁰ The Pregnancy Discrimination Act – an amendment to Title VII – categorizes employment discrimination on the basis of pregnancy as unlawful sex discrimination. 42 U.S.C. § 2000e(k).

¹¹ *Current Population Survey (CPS) Supplement Files*, NATIONAL BUREAU OF ECONOMIC RESEARCH, <http://nber.org/data/current-population-survey-data.html>.

¹² Professor Shinall also dismantles the possibility that *when* women develop disabilities has a greater impact on their ability to work. If this is the case, then a parallel trend in rates of SSDI (Social Security Disability Insurance) enrollment by sex ought to exist. It does not. "In fact, ... the opposite pattern is apparent in SSDI receipt by sex, with men consistently collecting disability payments at higher rates than women." Shinall, *supra* note 1, at 24.

¹³ See Shinall, *supra* note 1, at 25 n.86 (citing sources).

¹⁴ *Id.* at 29-31.

¹⁵ *Id.* at 31.

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The individual should contact the airline in advance to find out what animals may or may not be permitted in the cabin. Airlines are not required to allow unusual animals such as snakes, reptiles, ferrets, rodents and spiders. Foreign airlines are not required to allow animals other than dogs.

It should be noted that many states have laws that provide different definitions of service animals. It is a good idea to check the state's law where you reside and follow the law that would offer the greatest amount of protection for service animals. If you have questions regarding service animals and emotional support animals under the ADA, you can go online at www.ADA.gov or call the local Rocky Mountain ADA Hotline at 1-800-949-4232.

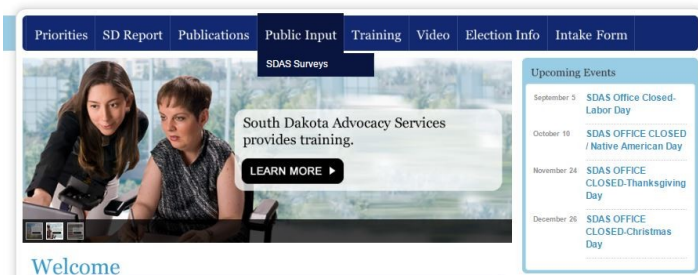
Information for this article was taken from the publication ADA National Network Service and Emotional Support Animals, Where are they allowed and under what conditions and Frequently Asked Questions about Service Animals and the ADA.

The Future is Here - and so is South Dakota Advocacy Services!

Expansion into the digital landscape

by Cole Uecker

For some time now, South Dakota Advocacy Services (SDAS) has had a website, www.sdadvocacy.com. The public can go there to see upcoming events, our contact information, a selection of useful agency publications, the Priorities that we are working on for the current year, and a description of our agency and the programs that we administer. There is no question that if people want to know anything about SDAS or disability rights in South Dakota, the SDAS website is the place they should go.



There is a good chance that you are reading this article on your computer or another digital device. That is because SDAS made the decision to “go green” with the distribution of the South Dakota Report. By having our newsletter sent electronically, rather than mailed in paper form, we are able to cut costs and cut down on environmental impact. Providing our newsletter electronically also gives SDAS the ability to produce a product that is more aesthetically pleasing and interactive. While subscribers can still elect to receive the publication in the traditional paper format, we have found that the vast majority of our readers prefer to get it delivered right to their email inbox (currently 792 on-line and 62 paper subscribers). In addition to receiving it in a personal email inbox, one can also access our newsletter by clicking the link on the aforementioned SDAS website or find it posted on Facebook.



That's right! South Dakota Advocacy Services is now on Facebook! www.facebook.com/SDAdvocacyServices/. So-

cial networking has become the way that over 1.5 billion people around the world get connected with one another. Not only is it used between families and friends, but it has also become an important tool for professional services to get the word out about the ways that they can help those in their respective communities. In the few weeks that our page has been active, 668 people have visited the page and 328 people have “liked” us on Facebook. Think of this in terms of a public outreach effort. Every time an article, announcement, picture, or video is posted, SDAS is able to share valuable and current information related to disability rights with hundreds of people. With nearly 500,000 Facebook accounts in South Dakota alone, the potential for empowerment is incredible. Please visit and “like” our page to follow the exciting developments happening in the area of disability rights.



In addition to our general agency page, Partners in Policy-making maintains a Facebook group page at <https://www.facebook.com/groups/45947614719/>. This page has 316 group members and serves to provide regular posts on disability-related topics, as well as to keep Partners connected no matter their graduating class or location.

#PAVA. Our PAVA Director, C.J. Moit, has set up a Twitter account to get the word out about voting rights and accessibility. Her posts can be accessed at: <https://twitter.com/AdvocacyMoit>. This Twitter page is very active, especially at this stage in the political cycle. Visit to learn about ways to ensure that persons with disabilities in your district have the opportunity to exercise their rights and have their voice heard.

There are so many opportunities to utilize the power of the web and social networking to reach people who could benefit from information and services that SDAS can provide. Platforms such as Twitter, YouTube videos, blogs, LinkedIn, Instagram, and many others can be utilized to advance the SDAS mission. Please contact us if you have any suggestions on how SDAS can become even more effective in getting its message out.



Partners in Policymaking Celebrates 24 Years

by Sandy Stocklin Hook

State Representative, Paula Hawks, District 9, Hartford, addressed the 31 graduates and 370 people in attendance at the 24th annual Partners in Policymaking graduation celebration held at the Ramkota Inn in Sioux Falls on April 23, 2016. Representative Hawks praised the group and stated: "You are the people who will make things happen. You are the one's who can make the difference." Hawks was awarded the annual South Dakota Advocacy Services Legislative Advocacy Award for her work in helping to secure equality for South Dakota citizens with disabilities.



Representative Paula Hawks

The Class of 2016 chose *Empowerment -- Together We Can Do Great Things* as its class theme. Graduates of the Class of 2016 included David Colling, Howard; Kara Conner, Anne Cosgrove Wimberly, Catherine Godes, Christopher Goodfellow, Amanda Hemmestad, Frances Squashingroff, and Miranda Thorson of Brookings; Brent Craft, Aberdeen; Katherine Dykstra and Janelle Whitlock of Sioux Falls; Lisa Harpster, Prairie City; Trevor Helton and Mary Paulette Lenz

of Chamberlain; Kim Jones, Melissa McClelland, Judy Shields Him, Cole Uecker, and Sammy Voegele of Pierre; Rebecca Kidder and Brendon Sato, Rapid City; Betsy Rick Luke, Hartford; Patricia Mayrose, Salem; Abbey Merchen, Spearfish; Jenna Miedema, Wolsey; Jennifer Nesseim, Lennox; Arianna Swift, Hot Springs; Stacy Two Lance, Porcupine; Emily Weber, Wessington; Barb Wilson, Kimball; and Sierra Wolcott, Sisseton.

Honored guests in attendance included: House Majority Whip, Jim Bolin of Canton; Senator Art Rusch of Vermillion; House Minority Whip, Paula Hawks of Hartford; Liz Stowers of Sioux Falls representing Senator Mike Rounds; Jeanne Hovland from Sioux Falls representing Senator John Thune; and Owen Shay of Sioux Falls representing Congresswoman Kristi Noem.

Shelly Pfaff of Pierre received the Robert J. Kean Advocacy Award, which is given annually by the SDAS Board of Directors. The award is given to individuals who have provided leadership and advocacy in the field of disability rights. Pfaff is the Executive Director of the South Dakota Coalition of Citizens with Disabilities.



Shelly Pfaff

Partners in Policymaking in South Dakota is sponsored in part by grants from the South Dakota Council on Developmental Disabilities, USD Center for Disabilities, LifeScape, and South



Graduation Speaker, Brendon Sato

Dakota Parent Connection. The training is based on the national Partners in Policymaking model. National and state speakers who are knowledgeable about disability-related issues present on issues affecting people with disabilities, best practices, and the policymak-



Graduation Speaker, David Colling

ing and legislative processes at the local, state, and federal levels. Partners training analyzes developmental disability issues and is designed to build the skills that consumers, parents, and guardians need to effectively obtain the most appropriate services for themselves and others and to assist them to

Partners in Policymaking
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Partners in Policymaking

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participate in decision-making situations. The overall goal of Partners in Policymaking is to achieve a productive partnership between people needing and using services and those in a position to make policy and law.



Graduation Speaker, Melissa McClelland

The training is held one weekend per month, for six months, from November through April. The training is held in Pierre for the first five sessions, with the final session held in Sioux Falls. Because of the time and distance involved for the participants, it requires dedication and commitment on the part of the participant to make the time to be away from family and home.



Graduation Speaker, Lisa Harpster

The training program in South Dakota is conducted by SD Advocacy Services (SDAS). Sandy Stocklin Hook of Pierre is the project coordinator for the training course. She noted, "We now have 588 individuals who have com-



Graduation Speaker, Betsy Rick Luke

pleted Partners in Policymaking in South Dakota. Their voices are being heard!" Stocklin Hook also commented, "We strongly believe that individuals who use services should have a major role in determining what services they are being provided and how they are delivered. It is really exciting to see the Partners' enthusiasm and commitment to improving national, state and local services."



Sierra Wolcott, Abbey Merchen, and Catherine Godes singing *Lean On Me*

Class graduation speakers were Lisa Harpster, David Colling, Melissa McClelland, Brendon Sato, Elizabeth Luke, and Janelle Whitlock. Catherine Godes, Sierra Wolcott, and Abbey Merchen sang "Lean on Me" and led the entire class in "The Fight Song."

Stocklin Hook addressed the class and said each member is a Genie watching over each other and providing support. She went on to humorously highlight the qualities of each member of the class, often shaking and rubbing the Genie lamp. She explained, "We all have a secret Genie – it's called empowerment. Not with someone else giving us power, but with the power inside of us, the power we've had all along." She closed by encouraging everyone to "find

your lamp, use it, and make a difference."

In addition to graduation ceremonies, 161 graduates of prior years of SD Partners in Policymaking spent the weekend in Sioux Falls attending continuing education classes on current



Graduation Speaker, Janelle Whitlock

issues. "Networking is a very integral part of the entire training initiative. We have made a commitment to gather all graduates with the current class and offer continuing education and networking. Once a Partner graduates from the course, they are not forgotten," commented Emily Garcia of Pierre, the PADD Program Director for South Dakota Advocacy Services.



Sandy Stocklin Hook

Year Twenty-five of Partners in Policymaking will begin in November 2016. For more information on the program, contact Sandy Stocklin Hook, SD Advocacy Services, 221 S. Central Ave., Pierre, SD 57501 or call 1-800-658-4782. Or you can visit the SDAS Website for Partners information at www.sdadvocacy.com or email hooks@sdadvocacy.com.

Wheelchair Transportation - IS IT SAFE?

by Charlene Hay

People who utilize wheelchairs that require commercial vans or transport systems in order to be transported are protected under the Americans with Disabilities Act (ADA). Does that mean that all elements of the ADA are followed by every provider? The simple answer is "no."

Wheelchairs are not required to have working brakes for use while they are on transit or commercial vans. Instead, wheelchairs are to be secured by four tie downs, two in the front and two in the back. A 1997 report by the National Highway Traffic Safety Administration

I met with Jason Johanneson, an owner of R&R MOBILITY in Sioux Falls, SD., to discuss wheelchair safety. Jason stated that R&R takes the safety of people using wheelchairs while being transported in vehicles very seriously. R&R Mobility

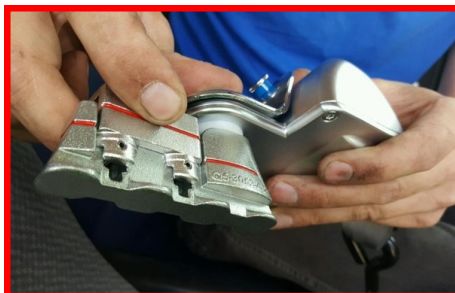


Photo 2

uses Q'Straint 4-Point Securement systems and components that comply with related safety regulations and standards of ADA, FMVSS (Federal Motor Vehicle Safety Standards), and CMVSS (Canadian Motor Vehicle Safety Standards). Jason stated that they use no salvaged parts in their business. R&R uses equipment with specific manufacturer's specifications when installing these restraints. This equipment has been crash-tested in simulations to assure its safety. It is highly recommended not to mix parts and components from other manufacturers in order to make a complete system.



Photo 1

found between 1990 and 1995 that 35% of all wheelchair user injuries or deaths associated with motor vehicles were due to improper or no securement of the wheelchair, while another 19% were due to lift malfunction. A study of large accessible transit vehicles showed 76% of wheelchairs were not secured using four-point tiedowns and misuse of lapbelts occurred 44% of the time, with an accident rate over 350 times greater than non-wheelchair using passengers. Regardless of the statistics from these or other studies, wheelchair users in vehicles are simply at a higher risk of injury from sudden stops, turns, and crashes if they are not properly secured.

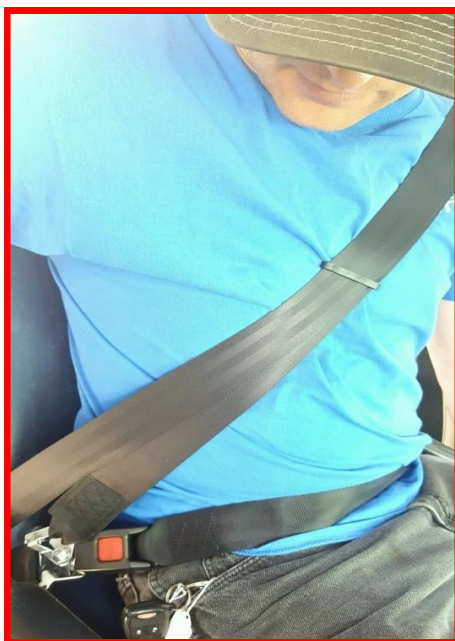


Photo 3

Securing the Wheelchair

The attendant needs to secure the wheelchair to the frame of the vehicle by facing it forward and applying wheel locks or turning the power off, if applicable. The two hooks in the back are attached to anchorages attached to the floor of the van, as shown in Photo 1. The hooks are not to be connected to the wheels, plastic, or removable parts of the wheelchair.

Photo 2 gives us an idea of the complexity of the floor anchorage that is secured to the frame of the van or transit bus. The attendant needs to make sure all tie-downs are locked and properly tensioned. If necessary, the wheelchair must be rocked back and forth in order to manually tension the retractor knobs. When the wheelchair is secure, there will be little movement in any direction.

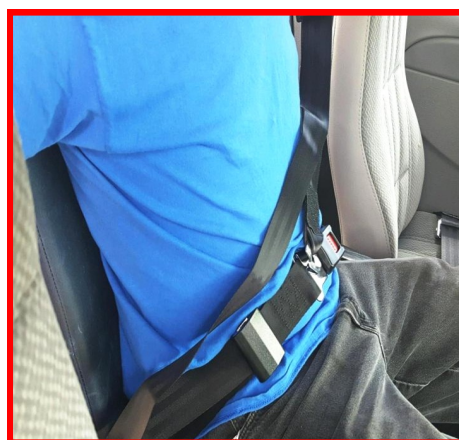


Photo 4

An area that can be easily overlooked due to time, cost, or lack of training is the lap/shoulder belt. Attendants may fail to use, or properly use, the lap and shoulder belts required to keep the person in the chair in the event of an accident or a sudden stop. The buckle must rest on occupant's hip (as shown in Photo 3). Photo 4 shows an incorrect way to attach the lap and shoulder belt.

People who use transit or commercial vans rely on the company or business to provide a safe ride that will protect them from sudden braking or accidents. Safety may be compromised if the system used in transporting a person using a

Wheelchair Transport Safety
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Apps You Need to Know About

(Continued from page 5)

Blendr A flirting app used to meet new people through GPS location services. You can send messages, photos, videos, rate the hotness of other users, etc.

Risks: There are no authentication requirements, so sexual predators can contact minors and minors can meet up with adults. And again, the sexting.

Down This app, which used to be called *Bang With Friends*, is connected to Facebook. Users can categorize their Facebook friends in one of two ways: They can indicate whether or not a friend is someone they'd like to hang with or someone they are "down" to hook-up with.

Risks: Although identifying someone you are willing to hook-up with doesn't mean you will actually hook-up with them, it creates a hook-up norm within a peer group. Depending on your sexual values, this might be something you don't want for your child. Also, because of the classification system, a lot of kids will feel left out or unwanted, which can lead to anxiety, etc.

Burn Note is a messaging app that erases messages after a set period of time. Unlike many other apps of this sort, it limits itself to text messages; users cannot send pictures or video. That may reduce issues such as sexting -- but words can hurt, too.

Risks: It allows kids to communicate covertly. To discourage copying and taking screenshots, a spotlight-like system that recipients direct with a finger (or the mouse) only reveals a portion of the message at a time. It may encourage risky sharing. The company claims that its "Multi-Device Deletion" system can delete a message from anywhere: the device it was sent from, the device it was sent to, and its own servers. But it's wise to be skeptical of this claim. You don't have to have the app to receive a Burn Note. Unlike other apps -- for example, Snapchat -- users can send a Burn Note to anyone, not only others who have the program.

MeetMe "Chat and Meet New People," says it all. Although not marketed as a dating app, *MeetMe* does have a "Match" feature whereby users can "secretly admire" others, and its large user base means fast-paced communication and guaranteed attention.

Risks: It's an open network. Users can chat with whoever's online, as well as search locally, opening the door for potential trouble. Lots of details are required. First and last name, age, and ZIP code are requested at registration, or you can log in using a Facebook account. The app also asks permission to use location services on your teens' mobile devices, meaning they can find the closest matches wherever they go.

This article was reprinted with the permission of Children's Home Society of South Dakota, www.chssd.org, (605) 343-2811.

Change Your Life

(Continued from page 3)

The world needs Partner graduates who hold social responsibility as a core value; not only to help people interpret the cards they've been dealt, but know what to do with those cards to make the best hand for them and for everyone. Being a Partner means that you are not alone and you are a better person, friend, and member of our ever-changing and challenging world. Partners will challenge you to think before you speak, speak before you act, and to act before you ever give up!

Apply **NOW** for Year 25 of South Dakota Partners in Policymaking. You can apply online at www.sdadvocacy.com. Click the training button and follow the links. For more information, contact Partners Coordinator, Sandy Stocklin Hook, at hooks@sdadvocacy.com or call 1-800-658-4782.

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

**Reminder - Applications for Year 25 of
Partners in Policymaking are due
September 20, 2016!**

**26th Annual ADA Picnic
July 22, 2016 - 11:30 am to 1:30 pm
Memorial Park Band shell
Rapid City, SD**



Dianna Marshall, SDAS PAIMI Program Director, Morris Brewer, SDAS Board Vice President, and Twila Stibral, SDAS PATBI Program Director (l-r), attended the annual National Disability Rights Network (NDRN) Conference in Baltimore in June.

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CHANGE SERVICE REQUESTED

Wheelchair Transport Safety

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wheelchair is not inspected both externally and internally.

Who Checks for Safety?

I found that the drive train and exterior of the van or transit vehicle are checked for deficiencies on a regular basis. I have not found any information about procedures that require or explain the monitoring of the interior of wheelchair transport vehicles.

South Dakota Advocacy Services was contacted by a concerned citizen who felt that a commercial wheelchair transport service was not using appropriate techniques when transporting people using wheelchairs. SDAS investigated the citizen's concerns. The investigation revealed that this transport service at times would transport more people than the van would allow. People were positioned at an angle (incorrect), forward (correct), and backward (incorrect) in the van. Wheelchairs were not secured using the four-point tie-downs and in most situations the shoulder belt was not present or used. One of the fleet vans had a lift that was not fully

operational because the security bar did not secure the back wheels of the wheelchair once the lift was elevated.

The investigation also identified that the only requirement for employment of drivers/attendants is a South Dakota driver's license and a good driving history. The staff of this company was not provided specific training in appropriately using tie-downs. After making the caller aware of these requirements, the caller decided to change to another service provider.

There are wheelchair transportation providers who provide excellent service with safety in mind. Consumers need to be aware of the safety requirements and

make sure their transportation provider is properly securing their wheelchairs as required by the ADA.

Sources

U.S. Department of Transportation, National Highway Traffic Safety Administration, "Wheelchair Users Injuries and Deaths Associated with Motor Vehicle Related Incidents," *Research Note*, September 1997

U.S. Department of Veterans Affairs, "Investigation of wheelchair instability during transport in large accessible transit vehicles," Salipur, *et al.*, *Journal of Rehabilitation Research & Development*, Vol. 49, Number 6, 2012.

Calendar

- ♦ **September 20, 2016** - Partners in Policymaking Application deadline
- ♦ **September 27, 2016** - National Voter Registration Day
- ♦ **October 5, 2016** - Nat'l Disab. Empl. Awareness Mo. (NDEAM) breakfast, 7:30 -10:00 a.m., Avera Prairie Ctr., Sr. Colman Rm., 1000 E. 23rd St., Sioux Falls
- ♦ **October 17, 2016** - REVUP voter registration event, 4:00-6:00 p.m., Main Street Square, Rapid City
- ♦ **October 18-20, 2016** - Rehabilitation Services Fall Conference, Deadwood
- ♦ **October 24, 2016** - Voter registration deadline for General Election
- ♦ **November 8, 2016** - Election Day