



# South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

## THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

Volume 31, Issue 2

March, 2016

# Using the Special Education Process to Educate Children, Not to Exclude Them

by Cole Uecker

*The task of the modern educator is not to cut down jungles, but to irrigate deserts. – C.S. Lewis*

### Introduction

Our children's teachers have one of the most challenging and certainly one of the most important jobs that exist in our society. Keeping up on the modern techniques, standards, and content in an effort to provide top-notch substantive instruction is a monumental task in itself. However, the job of a teacher is not limited to phonetics and mathematics. School is a principal place where we learn how to interact with peers and with non-familial authority figures. We learn how to make friends, we have disagreements, and we learn how to resolve conflicts. So many life experiences occur first within the walls of the schoolhouse. We ask teachers to help guide our children through these rites – a daunting task to be sure.

As children are introduced to the many novel events in their early years, there are sure to be growing pains along the way. This can be especially true for children with disabilities, who may have additional variables to factor into their response. Behaviors such as inattention, defiance, outbursts, and non-compliance are common manifestations for children with emotional or developmental needs. Over time, it can become very trying for even the most patient and experienced educators to cope



Partners in Policymaking Class of 2016 with Governor Dugaard. See page 16.

with these situations. The conversation often begins to shift from the individual right to a free appropriate public education for every student to the question of whether it is fair that one student takes so much time and attention away from the rest of the class due to behaviors.

### See no evil ...

South Dakota Advocacy Services has been noticing a trend in the way schools have been addressing behaviors exhibited by students with disabilities. Many students are sent home at some point during the school day, or their IEP may even be written to exclude the child from part of the school day as a matter of course (sometimes without access to lunch). As a result, these students receive no instruction in subjects that are

taught during that part of the day and have reduced opportunity to interact with peers. They miss events such as

### Shortened School Days

(Continued on page 2)

### IN THIS ISSUE . . .

Shortened School Days . . . . .	1
"Healing Voices" Screenings . . . . .	3
Voting in South Dakota 101 . . . . .	4
Braille - An Evolving Code . . . . .	5
SDAS Intake Process . . . . .	6
Legal Pull-out Section	
Serving Children's Unique Needs . . . . .	7
NCLB / ESSA . . . . .	10
Caroline's Cart . . . . .	15
Partners in Policymaking . . . . .	16
SDAS Access Authority . . . . .	18
SDAS Personnel . . . . .	19

## Shortened School Days

(Continued from page 1)

field trips and school concerts. These exclusions result in diminished access to services that could help the excluded students to develop needed skills addressing their disability concerns. School administrators will often point out that the partial day "solution" has resulted in reduced instances of negative behaviors for students. This should come as no great surprise because the students are only *at school* about half the time; thus, they have only half the chance to display behaviors when their school day is shortened.

The ultimate goal should not be to eliminate the exposure to a particular environment where misbehavior is a concern. The goal should be to help the child develop skills necessary to interact appropriately in all environments.

### There are so many ways to help children

There are many services that can be considered in lieu of or to reduce exclusion: Individual counseling services; adjustments in Behavior Intervention Plans; positive reinforcement strategies; class schedule amendments; assignment of a paraprofessional; occupational therapy; space to "de-escalate;" Functional Behavioral Assessments; family counseling; sensory supports or breaks; medical evaluations; visual cues; incentives; and/or enlisting a variety of mental health services from the community. These are examples of some options which can be discussed by an IEP team to help children cope with their particular needs without simply sending them home when elements of their disability become hard to manage.

Compulsory attendance for school-age children is the law in most states. If parents were to unilaterally withhold meaningful and appropriate access to education, they could be subject to legal action due to that child's truancy. Every school-age child in this country has the right to a free and appropriate public education; this right is abridged if the doors of the schoolhouse are closed to the child - regardless of who has closed the doors.

### Conclusion

The South Dakota Department of Education has stated that an IEP Team *may* determine that a shortened day is appropriate given the particular needs of the child. It is not inconceivable that such an adjustment might be the correct course of action. If a child has a condition that would make full days too taxing and thus dangerous for his health, then partial days would clearly be indicated. The basis or justification for shortening a child's school day needs to be clearly set out in the child's IEP. Exclusions for the convenience of the school are never appropriate as an educational technique and should not be used as a punitive measure unless the child has violated the code of student conduct and is treated the same as children without disabilities for similar behaviors.

The vast majority of our schools and teachers do incredible work in everything that they do for their students. IEP teams across South Dakota work tirelessly to identify, evaluate, and support children with disabilities so as to provide an educational environment most appropriate for their needs. Schools and IEP teams should be commended for these efforts. A partial day modification for behaviors can become a convenient means to address a student's behavior.

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.

New Callers should contact intake staff at 1-800-658-4782.

#### Pierre (central office)

221 S. Central Ave., Suite 38  
Pierre, SD 57501  
(605) 224-8294 or (800) 658-4782  
FAX (605) 224-5125; Email: [sdas@sdadvocacy.com](mailto:sdas@sdadvocacy.com)

#### Executive Director

Tim Neyhart ([neyhartt@sdadvocacy.com](mailto:neyhartt@sdadvocacy.com))

#### Senior Staff Attorney

Gail C. Eichstadt ([eichstadtg@sdadvocacy.com](mailto:eichstadtg@sdadvocacy.com))

#### PADD Director

Emily Garcia ([garciae@sdadvocacy.com](mailto:garciae@sdadvocacy.com))

#### CAP Director

Cole Uecker ([ueckerc@sdadvocacy.com](mailto:ueckerc@sdadvocacy.com))

#### PAVA Director

Cindy J. Moit ([moitc@sdadvocacy.com](mailto:moitc@sdadvocacy.com))

#### Executive Assistant/

Sandy Stocklin Hook ([hooks@sdadvocacy.com](mailto:hooks@sdadvocacy.com))

#### Partners Coordinator

Kristy Dozier ([dozierk@sdadvocacy.com](mailto:dozierk@sdadvocacy.com))

#### Intake/Admin. Specialist

Pam Middleton ([middletomp@sdadvocacy.com](mailto:middletomp@sdadvocacy.com))

#### Administrative Assistant

Ona Arnold ([arnoldo@sdadvocacy.com](mailto:arnoldo@sdadvocacy.com))

#### Dir. of Finance and Admin.

Pamela Stout ([stoutp@sdadvocacy.com](mailto:stoutp@sdadvocacy.com))

#### Fiscal Assistant

#### Rapid City

1575 N. LaCrosse Street, Suite K  
Rapid City, SD 57701  
(605) 342-2575 or 342-3808  
FAX (605) 342-0651

#### Staff Attorney/PABSS Director

Brian G. Gosch ([goschb@sdadvocacy.com](mailto:goschb@sdadvocacy.com))

#### PAIMI Director

Dianna L. Marshall ([marshald@sdadvocacy.com](mailto:marshald@sdadvocacy.com))

#### Administrative Assistant

Marie McQuay ([mcquaym@sdadvocacy.com](mailto:mcquaym@sdadvocacy.com))

#### Sioux Falls

2121 W. 63<sup>rd</sup> Place, Suite 30  
Sioux Falls, SD 57108  
(605) 361-7438  
FAX (605) 361-4338

#### Legal Affairs Director/

John A. Hamilton ([hamiltaj@sdadvocacy.com](mailto:hamiltaj@sdadvocacy.com))

#### Newsletter Editor

Kate Dykstra ([dykstrak@sdadvocacy.com](mailto:dykstrak@sdadvocacy.com))

#### Staff Attorney/PAIR Dir.

Carrie Geppert ([geppertc@sdadvocacy.com](mailto:geppertc@sdadvocacy.com))

#### PAAT Director

Charlene Hay ([hayec@sdadvocacy.com](mailto:hayec@sdadvocacy.com))

#### Advocacy Services Representative

Norma Vrondran ([vrondran@sdadvocacy.com](mailto:vrondran@sdadvocacy.com))

#### Administrative Assistant

#### Yankton

1719 Broadway, Suite 2B  
Yankton, SD 57078  
(605) 665-5616  
FAX (605) 665-5051

#### PATBI Director

Twila Stibral ([stibralt@sdadvocacy.com](mailto:stibralt@sdadvocacy.com))

#### Advocacy Services Assistant

Heather Kotalik ([kotalikh@sdadvocacy.com](mailto:kotalikh@sdadvocacy.com))

#### Board of Directors

Juanita Harrington, Piedmont

President

Morris Brewer, Porcupine

Vice President

Jack Mortenson, Sioux Falls

Secretary/Treasurer

Chris Beesley, Custer

Roger Bowie, Sioux Falls

Cary Gronemeyer, Sioux Falls

Dillon Haug, Spearfish

Tim Lemke, Bruce

Jill Furan, Sioux Falls

PAIMI Council Chair

Bev Gunderson, PhD, Sioux Falls

Ex-officio

The South Dakota Report is an official publication of South Dakota Advocacy Services and is published three times yearly. 100 copies of this newsletter were printed by SDAS at a cost of \$3.29 each utilizing federal funds.



# “Healing Voices” Screenings in South Dakota

by Dianna Marshall

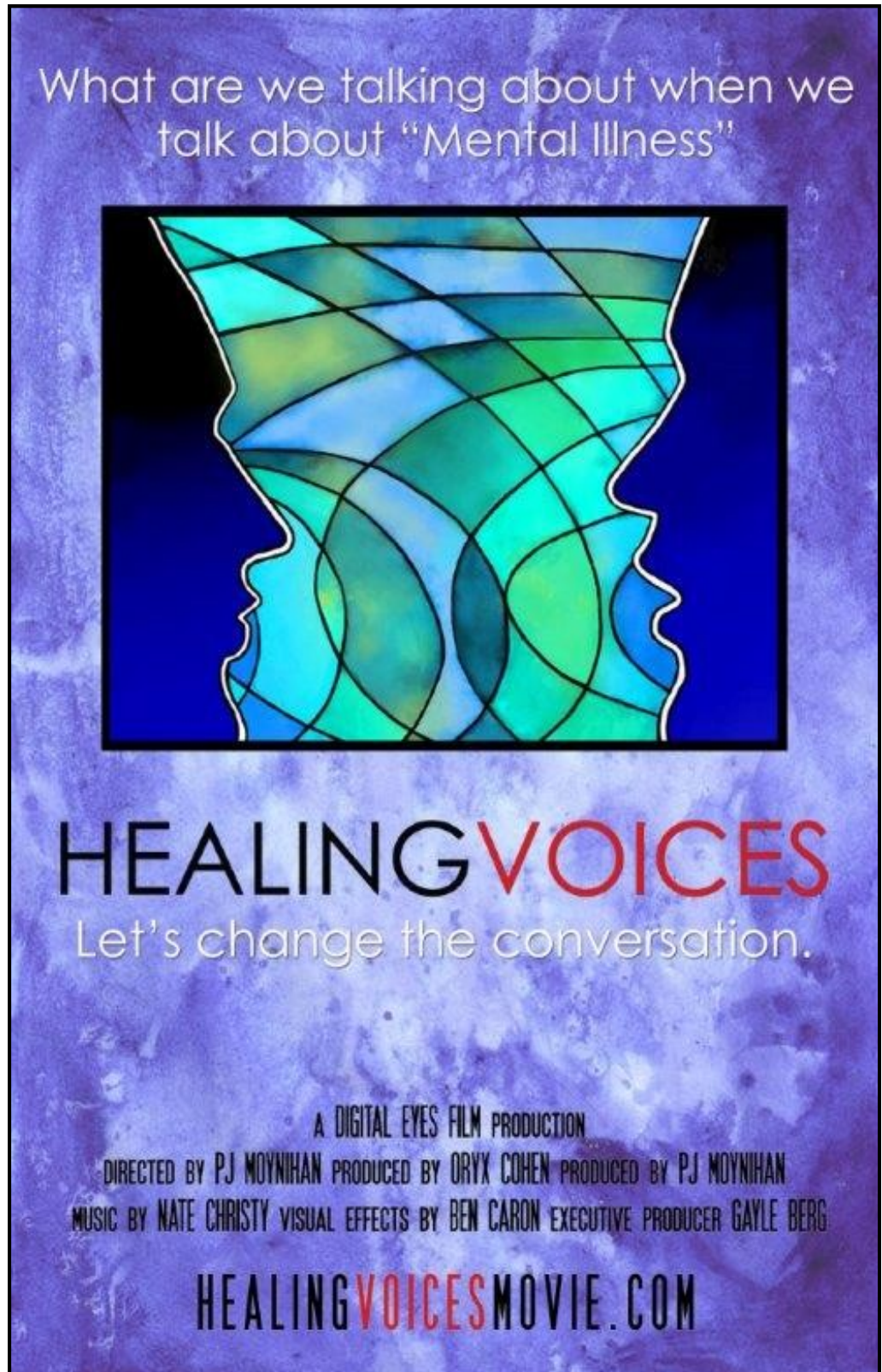
**A**s community partners, South Dakota Advocacy Services’ Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program and South Dakota United for Hope and Recovery (SD United) will be holding screenings of the film documentary entitled, “Healing Voices,” in three communities in South Dakota. “Healing Voices” was written and directed by PJ Moynihan, of Digital Eyes Film, who followed three individuals with lived experience in mental health - Oryx, Jen, and Dan - over a five-year period. There are currently 110 screenings confirmed globally.

The film is being premiered with a global release on April 29, 2016. Screenings of the film in South Dakota will be held:

- ♦ April 29th in Rapid City at The Seed Theater, 6:00pm-8:30pm
- ♦ April 29th in Sioux Falls at The Bakery, 6:00pm-8:00pm
- ♦ May 6th in Aberdeen at the Red Rooster Coffee House (time to be determined).

A structured dialogue with the audience on the content of the film and the topic of mental health will follow the screening.

The screenings will be open to the public. SDAS and SD United are hoping that people with lived experience in mental health, advocates, educators, mental health providers, healthcare workers, first responders, family members, and anyone else who might be interested in learning more about mental health will participate in the screening and the dialogue after the film. As the dates get closer, look for promotional information in these three communities. For more information about the film and to view the promotional trailer, please visit [www.HealingVoicesMovie.com](http://www.HealingVoicesMovie.com).



# Voting in South Dakota 101

by C.J. Moit

**W**ith few exceptions, every citizen of the United States has the right to vote. Each state, however, creates its own laws regarding those rights. Citizens of South Dakota are fortunate, as there are very few restrictions regarding who can and cannot vote.

In South Dakota, you can register if you meet **all** of the following qualifications:

1. you are a U.S. citizen;
  2. you are a South Dakota resident;
  3. you will be at least 18 years old on Election Day;
  4. you have not been declared by a court to be mentally incompetent (*denial of right to vote must be specified by the judge*); and
  5. you are not currently in prison, on parole, or on probation for a felony conviction. *Once a person is no longer involved with the judicial system, the person regains the right to register and vote.*
- ♦ Having a guardian does not take away the right to vote, nor can the Guardian require who or what to vote for.
  - ♦ Living in an institution does not take away the right to vote.

What does this mean? Unless a judge specifically states an individual is incompetent to vote, any person in South Dakota can register to vote and exercise the right to vote regardless of his or her diagnosed disability.

Voter registration forms can be picked up at your local county auditor's office, social services, driver license offices, and vocational rehabilitation offices. Individuals with a computer and printer can go to <https://sdsos.gov/elections-voting/voting/register-to-vote/default.aspx> to download a voter registration form. The forms must be returned to the county auditor's office no later than 15 days prior to an election.

In addition to South Dakota's laws allowing individuals to vote, there are Federal laws that provide additional rights:

- ♦ All polling places must meet Americans with Disabilities Act accessibility standards and have an accessible voting device. *In South Dakota these devices are the Express Vote or Automark Voting Device.*
- ♦ When you cast your vote, you can choose anyone you wish to assist you. *It can be a family member, friend, or you can ask a Poll Worker to assist you as well.*
- ♦ If you are unable to travel to a polling place, or choose not to, you have the right to vote absentee. *You can request an absentee ballot from your local county auditor's office 46 days prior to Election Day and return your ballot to the County Auditor either by hand delivery or mail, postmarked no later than midnight on Election Day.*
- ♦ No one has the right to demand or require how or for whom you vote.

A law unique to South Dakota makes a provision for the following: If five or more residents of a nursing facility request absentee ballots, the local County Auditor will arrange to come to the facility and allow residents to complete their absentee ballots all at the same time.

All voters are required to provide identification before voting or obtaining an absentee ballot. The personal identification that may be presented shall be one of the following:

- ♦ A South Dakota driver's license or a photo identification card;
- ♦ United States government photo identification;
- ♦ United States Armed Forces identification;
- ♦ A tribal photo identification card; or
- ♦ A current student photo identification card from a South Dakota high school or South Dakota accredited institution of higher education.

*If you do not have one of the types of photo ID listed above, you must be given the opportunity to complete the personal ID affidavit and allowed to vote a regular ballot.*

## 2016 Primary Election Timelines

- ♦ Voter Registration Deadline - May 23, 2016
- ♦ Absentee voting begins - April 22, 2016
- ♦ Primary Election is on June 7, 2016

## General Election Timelines:

- ♦ Voter Registration Deadline - October 24, 2016
- ♦ Absentee voting begins - September 23, 2016
- ♦ General Election is on November 8, 2016

**Voting is a RIGHT not a privilege**



## Your ONE VOTE matters!

- ♦ In 1776, the vote to have English as the new country's language defeated German by **ONE VOTE**.
- ♦ On August 18, 1920, women won the right to vote by **ONE VOTE**.
- ♦ Texas, Alaska, California, Idaho, and Washington all became states by **ONE VOTE**.



# Braille - An Evolving Code

by Gail C. Eichstadt

**W**e all know about Braille, a code providing a method for people who are blind or have low vision to read and write. The English language has evolved since Braille was created, becoming the primary international language. Braille is also evolving to keep pace.

Louis Braille, a Frenchman born on January 4, 1809, became blind as a child after an accident and resulting infection. As a talented student, Braille received a scholarship to attend the National Institute for Blind Youth in Paris. While at this school, Louis Braille received musical training. He also was introduced to Charles Barbier, who invented a code, based on sounds, to enable soldiers in Napoleon's army to communicate in darkness. Barbier used twelve dots in his code, which made it difficult to memorize and use. It failed as a communication system.

Braille created his less-complicated code when he was fifteen after learning about and trying to simplify Barbier's code. He created a code using six raised dots. He varied the placement of dots in two vertical lines of three to represent letters, numbers, capitalization, common words, punctuation, scientific symbols, diphthongs, and mathematical and music notation. Braille wrote *Method of Writing Words, Music and Plain Songs by Means of Dots for Use by the Blind and Arranged for Them* describing his code. It was published in 1829 when Braille was only 20.

Louis Braille's code was not immediately used as a reading and writing tool. Teachers of students who are blind in France opposed Braille's system because they feared it would eliminate their jobs. Teachers complained the classrooms became noisy when students punched Braille dots. One headmaster went so far as to burn books printed in Braille. Braille died in 1852 before his system became widely accepted.

Staff at the Missouri School for the Blind recognized the usefulness of Braille's code and began using it with American students in the 1850s and 1860s. Its use expanded from there to where Braille became the common written language for persons who are blind or have low vision. January has been recognized as Braille Literacy Awareness Month in the United States.

Over the past nearly 200 years, Braille has changed to fit the needs of the major languages in the world. English Braille, American Edition (EBAE), has been primarily used

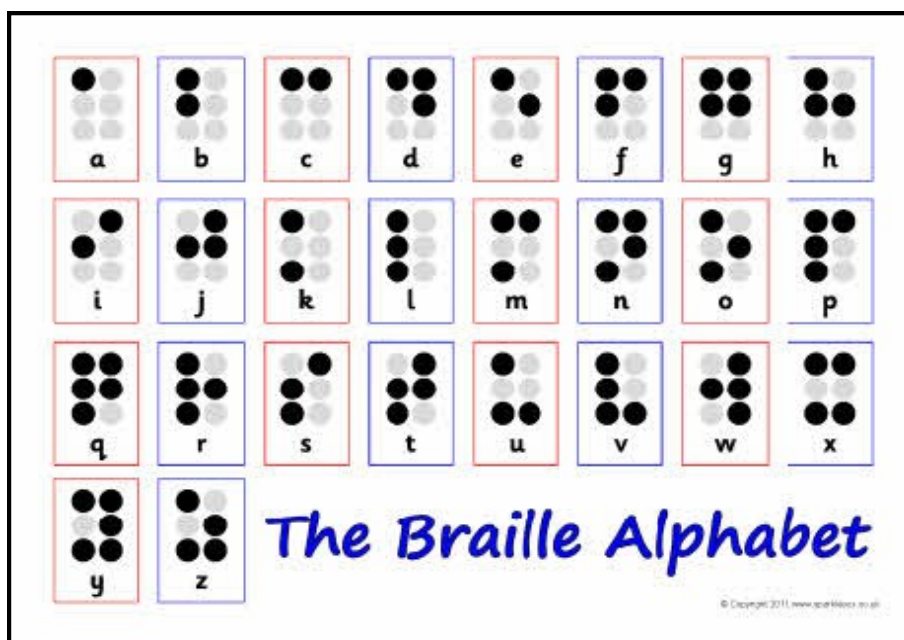
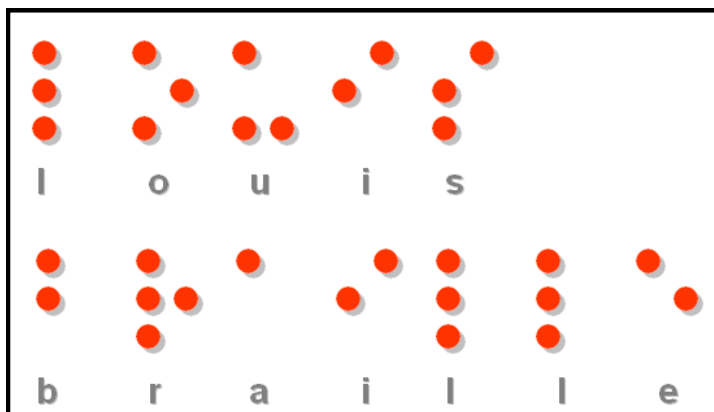
and accepted as the standard form of Braille in the United States. In November 2012, The Braille Authority of North America (BANA), an organization of fifteen members appointed from transcribers, consumers, teachers, and Braille producers, voted to shift gradually to Unified English Braille (UEB).

UEB became the standard Braille used in the United States on January 4, 2016.

Other official Braille codes adopted by BANA include: *Music Braille Code, 1997*; *Nemeth Code for Mathematics and Science Notation, 1972 Revision* and published updates; and *The IPA Braille Code, 2008*. It is expected that UEB will become a standard Braille for English around the world. The *Paths to Literacy* website lists sources to help individuals using EBAE to learn and transition to UEB. <http://www.pathstoliteracy.org/blog/welcome-ueb-resources-learning-new-braille-code>.

Helen Keller summarized the significance of Louis Braille's code when she wrote, "We the blind are as indebted to Louis Braille as mankind is to Gutenberg. ... Without a dot system what a chaotic, inadequate affair our education would be!"

*Sources:* American Federation for the Blind; BANA; Paths to Literacy; and other internet sources.



# Information, Referral, and Intake Process

by Tim Neyhart

Information, referral, and intake are all services provided by South Dakota Advocacy Services (SDAS). These services are the first contact that many people have with SDAS. These services are vitally important to the operation of the agency, yet because of some changes in our process, they may be confusing for some callers.

This article is an effort to clarify what these terms mean in the context what happens when a caller contacts SDAS. This article will also help callers to understand why the Intake Specialist asks for very specific and sometimes personal information during the phone call.

SDAS utilizes a uniform intake process. It is designed to provide a timely, consistent response to persons contacting the agency for assistance. Intake is a series of activities depending on the concerns of the person contacting the agency for assistance. It may include:

1. Helping the person define the issues and request for assistance.
2. Providing time-limited technical assistance services, such as providing relevant information either directly by phone or by sending information in the caller's preferred format. Information and referral (I&R) are generally of short duration of service and do not involve direct advocacy intervention or follow-up.
3. I&R services can entail a wide range of activities, including providing requested or suggested information and/or directing a person to another organization or agency for services as appropriate. I&R can be provided in the form of phone, mail, email, face-to-face, or during training and outreach. SDAS will make accommodations to address communication issues.
4. Gathering sufficient data and background information about the person and issue to assess eligibility for SDAS case services. This information is entered onto the Disability Advocacy Database (DAD) system, the secured system SDAS uses to record all information gathered from I&R and case-related calls.

All initial potential client calls coming into the agency offices are screened

to determine the nature of the issue. Most new callers will be forwarded to the Pierre office for intake. There are exceptions to this policy. Routine, non-complex questions (such as phone numbers or referrals to other readily-known resources) and calls from individuals in inpatient mental health facilities may be addressed by each SDAS office.

Except as otherwise noted, all initial calls for assistance, including calls from former clients regarding a new issue, will

be referred to the Intake Specialist in the Pierre office. The callers will be informed of intake hours. If the call comes to a field office, the caller will be given the toll-free number (800-658-4782) and informed that Intake Staff will return a call within two days. The field office staff person taking the initial call will notify the Intake Specialist of the call via email.

## ***SDAS Intake Process***

***(Continued on page 15)***



**On February 17, 2016, Governor Dennis Daugaard declared March to be Intellectual and Developmental Disabilities Awareness Month, as well as Traumatic Brain Injury Awareness Month, in South Dakota. The cities of Pierre (above) and Ft. Pierre (below) made similar local proclamations at their City Council meetings on March 1 and March 7, respectively.**





# *Legal Pull-out Section*

March 2016

## What Does it Mean to Serve a Child's Unique Needs? It Means Disability Classification is Irrelevant

by John A. Hamilton

One of the stated “purposes” of the Individuals with Disabilities Education Improvement Act of 2004 (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). “Unique” needs, by its very definition, would require an individualized determination of special education needed for each child with a disability. In the past few months, SDAS has become aware of situations in a handful of local school districts where a child’s unique needs seem to be taking a backseat to the child’s eligibility category. Schools are telling parents they will not provide services beyond those needed that are directly related to the child’s disability classification. This approach runs counter to the language of IDEA.

Before moving forward, it would be beneficial to understand the type of situation parents are encountering:

- ♦ 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. The district also refused to address the Dyslexia on a §504 Plan.
- ♦ A child was found eligible under Other Health Impairment due to ADHD. The child also has significant reading problems, but missed qualifying as having an SLD by two points. The school informed the parents it would only provide special education services to address the child’s behavior due to the ADHD because the child did not qualify as having an SLD in reading.

Both of these examples just happened to involve children with significant deficits in reading, which obviously would affect the child’s education in many classes. While the children in these examples had unique needs in the area of reading in addition to their particular disability classification, there are numerous potential areas where evaluations may show a given child has limited skills. These are all part of a child’s unique needs.

The position taken by these and other districts, that services are limited to the child’s disability classification, runs

counter to federal law and regulations, federal and state policy, and case law. In addition to the clear “purpose” of IDEA to address each child with a disability’s unique needs, the IDEA language contained in the areas of evaluation and IEP requirements also demand that each child’s unique needs be addressed.

### Evaluation Requirements

Prior to initial evaluations and reevaluations, IDEA requires the IEP Team and other qualified professionals, as appropriate, to review existing evaluation data and then “determine what additional data, if any, are needed to determine whether the child is a child with a disability ... and the *educational needs of the child*; or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the *educational needs of the child*; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.” 34 C.F.R. § 300.305(a) (emphasis added). Similarly, “Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parents of the child determines whether the child is a ‘child with a disability’ ... and the *educational needs of the child*.” 34 C.F.R. § 300.306(a) (emphasis added). Evaluations are intended to not only determine eligibility under IDEA, but also to broadly determine a child with a disability’s educational needs.

In the evaluation process, schools “must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” 34 C.F.R. § 300.304(c)(4). The regulations further clarify 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*

---

*Serving Children’s Unique Needs*

*(Continued on page 8)*

## ***Serving Children's Unique Needs***

***(Continued from page 7)***

*child has been classified.*" 34 C.F.R. §300.304(c)(6) (emphasis added). Not only must a child be evaluated in a variety of areas depending on what areas of disability are suspected for an individual child, but the evaluations must be comprehensive enough to identify all of the child's special education needs, regardless of the disability category in which the child is classified. In terms of the evaluation process, IDEA is very clear that the child's unique needs are paramount, while the child's particular disability classification is essentially irrelevant.

### **IEP Requirements**

Given the above language, there is presumably no dispute but that IDEA requires schools to broadly determine a child's unique needs through the evaluation process. Once a child is found eligible through an initial evaluation (or continued to be eligible through a reevaluation) and a disability classification is selected, the present levels of academic achievement and functional performance, annual goals (and short-term objectives/benchmarks when required), and special education services are all driven by the evaluation results. The argument used by districts that services are limited to the child's disability classification conflicts with the IEP requirements.

The regulations describing IEP content highlight the requirement to address the unique needs of each child with a disability. Among other things, "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 other 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). A key term in this regulation is "Special Education," as it 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). If a school is limiting services and supports based on disability classification, then by definition the school is not providing specially designed instruction to meet the *unique needs* of the child.

The IEP content, described above, makes it clear that special education services are not limited to simply making progress toward meeting annual goals. The *goals* must also be designed for allowing the child to progress in the general education curriculum. 34 C.F.R. § 300.320(a)(2)(i). Likewise, the special education *services* must be provided to enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. §300.320(a)(4). In addition, special education services must be provided to enable the child to participate in extracurricular and other nonacademic activities. *Id.* Furthermore, the special education services

described in the IEP must be provided to enable the child to be educated and participate with nondisabled students. *Id.*

Oftentimes, it may be the child's additional needs not commonly linked to the disability classification that must be addressed to allow for that progress in the general curriculum, participation in extracurricular and other nonacademic areas, and/or for the child to be educated with nondisabled children. In other words, it may well be those additional unique needs that impede progress in the general education curriculum, impede participation in extracurricular and other nonacademic areas, and/or impede being able to be educated with nondisabled peers if not addressed in the IEP. It is for that reason that IEPs must be tailored to meet each child's unique needs.

### **Federal Guidance**

There is little federal guidance on the topic of unique needs. However, the Office of Special Education Programs (OSEP) addressed the topic in 2002. In *Letter to Anonymous*, 37 IDELR 126 (OSEP February 12, 2002), OSEP stated:

"However, with respect to your immediate concerns about [ ] and other young children with autism in your school district, the IDEA state and Part B regulations ... both make clear that services for a child must be identified and provided based on the unique needs of the child. One of the goals of the IDEA is 'to ensure that all children with disabilities have available to them a free appropriate public education ["FAPE"] that emphasizes special education and related services designed to meet their *unique needs* ...' 20 U.S.C. §1400(d)(1)(A); 34 CFR §300.300.1(a) (emphasis added). Special education under the IDEA is 'specially designed instruction, at no cost to the parents, to meet the *unique needs* of a child with a disability ....' 20 U.S.C. § 1402(25); 34 CFR §300.26(a)(1) (emphasis added). In addition, under 34 CFR 300.300(a)(3)(ii), 'the services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs, and not on the child's disability.' Thus, decisions 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.

(Brackets and emphasis included in original). [Note: the citations contained in this policy letter were to IDEA 1997 and the 1999 regulations.]

Following passage of IDEA 2004, the Department of Education issued proposed regulations for public comment. Some comments concerned children with disabilities who may have a traumatic brain injury, other health impairment, speech impairment, cognitive impairment, emotional disturbance, visual impairment, and/or motor difficulties, but who may also have specific learning disabilities. Commenters recommended adding language to the regulations stating a child with a disability other than SLD may also be identified with an SLD. The federal DOE responded: "Children with one of the disabilities in §300.8 should be identified as a child with a disability using the category that is most appropriate

---

***Serving Children's Unique Needs***

***(Continued on page 9)***



## ***Serving Children's Unique Needs***

***(Continued from page 8)***

for the child. Some children may be identified under the other disability categories, such as OHI, TBI, ED, or speech impairment, and may also have low achievement and even meet SLD criteria. *Services must meet the child's needs and cannot be determined by the child's eligibility category.* We believe it is unnecessary to add language regarding SLD as a concomitant disability." Federal Register, Vol. 71, No 156, 46654-55 (August 14, 2006) (emphasis added).

The federal Department of Education has thus spoken twice to this issue. Both times, it described how services must be based on a child with a disability's unique needs, not on the disability category in which the child is classified. The latter response indicated that a child would not have to meet eligibility criteria for another disability classification, as services must be based on each child's unique needs.

### **State Guidance**

Both school districts in the above examples claimed to be acting based on directive or policy coming from the South Dakota Department of Education. The state Department of Education, Special Education Programs, has not issued any policy or directive on the topic in recent years. However, Deborah Barnett, Director of the Office of Special Education (now Special Education Programs), did issue a letter to Mary Fast, then of South Dakota Parent Connection, on October 5, 1999. The letter addresses concerns regarding eligibility and services the students receive based on eligibility classification. "Specifically, these parents were being told that a child may only be served in the area in which he or she qualifies. For example, if a student met the eligibility criteria as being a student with a specific learning disability in the area of written language, this student could not be served in the area of reading unless the criteria were also met for reading." Deborah Barnett responded: "In reviewing the intent of these regulations, it is clear that the placement committee is responsible for the development of the student's special education program, which means specially designed instruction. 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.

To reemphasize, *eligibility for special education does not drive nor determine what services a student will or will not receive.* The development of an appropriate program occurs once eligibility has been determined." (Emphasis added).

The only actual written guidance from the South Dakota Department of Education, while dated prior to the above federal guidance, provided the same message. Special education services must meet each child's unique needs and cannot be based solely upon the child's disability classification.

### **Case Law**

Cases on the topic typically involve parents claiming a district failed to acknowledge or identify a second or third

disability. Consistent with the discussion above, the court or hearing officer's response typically includes a ruling that the child's disability classification is irrelevant to the question of whether the district is providing FAPE based on the child's unique needs.

### ***Fort Osage R-1 School Dist. v. Sims***

In *Fort Osage R-1 School District v. Sims*, 641 F.3d 996 (8<sup>th</sup> Cir. 2011), a student with Down Syndrome had received special education services for several years. When she was eight years old, an independent evaluator determined the student also has Autism. The IEP Team met and classified her under "other health impaired." The parents brought a due process hearing. They claimed, among other things, the school failed to provide an appropriate education because it failed to account for the student's Autism. The case was eventually appealed to the Eighth Circuit Court of Appeals. The parents claimed the IEP must correctly identify a child's disability and the IEP cannot state how the child's disability affects the child's involvement and progress in the general curriculum if the IEP incorrectly identifies the disability. They further argued that without proper acknowledgement that the student has Autism, the school could not and did not tailor the program to her unique needs.

After noting the requirement that districts must identify all the child's special education and related services needs, whether or not linked to the disability category in which the child has been classified, the court stated: "Given the IDEA's strong emphasis on identifying a disabled child's specific needs and addressing them, we believe that the particular disability diagnosis affixed to a child in an IEP will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs." The court found the student's IEPs were highly customized to meet the student's unique needs and would not have materially changed if he student had been classified under the Autism category.

The Eighth Circuit Court of Appeals' decision, which is controlling law in South Dakota, made it abundantly clear that a student's educational needs and subsequent services cannot be dictated by disability classification. Rather, starting with the evaluation process, which requires schools to identify all of a child's needs regardless of the disability category in which the child is classified, IDEA takes an individualized, needs-oriented approach. Thus, an IEP must not be based on a student's disability classification, but rather on the student's unique needs.

### ***J.D. and B.D. ex rel. K.D. v. Crown Point School Corp.***

In *J.D. and B.D. ex rel. K.D. v. Crown Point School Corporation*, 58 IDELR 125 (N.D. Indiana 2012), the child (K.D.) had been determined eligible under IDEA due to a hearing impairment at age three in 2001. Over the years, evaluations showed significant deficits in reading, writing, and attention. In 2009, an independent evaluation diagnosed K.D.'s reading difficulties as Dyslexia and recommended a multi-sensory approach across all subjects. The district did

***Serving Children's Unique Needs***  
***(Continued on page 10)***

## ***Serving Children's Unique Needs***

***(Continued from page 9)***

not evaluate for a specific learning disability (SLD) until 2010, finding that she did not have one. The parents filed for a due process hearing and subsequently brought a federal court action regarding several alleged procedural and substantive violations. Of significance to this discussion, the parents claimed the district's failure to properly evaluate resulted in IEPs that did not address K.D.'s needs. Despite the fact that the school had failed to conduct the triennial reevaluation when due in 2009, the court ruled in the school's favor. The district argued that regardless of whether K.D. is labeled as having an SLD or is labeled with problems with focus, attention, and cognition, the IEPs were tailored to meet her needs.

Quoting *Heather S. v. Wisconsin*, 125 F.3d 1045 (7<sup>th</sup> Cir. 1997), the court stated, "whether [the student] was described as cognitively disabled, other health disabled, or learning disabled is all beside the point. The IDEA concerns itself not with labels, but with whether the student is receiving a free and appropriate education. ... When 'the school is dealing with a child with several disabilities, the combination of which ... make [the student's] condition unique,' the IDEA 'charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [the student's] multiple disabilities.'" The court found, despite K.D.'s classification as hearing impaired, that the IEPs included goals and benchmarks addressing writing, spelling, reading comprehension and fluency, memory and cognitive functioning, problem solving, and speech articulation, as well as accommodations for attention and focus issues and a behavior intervention strategy to address distraction. Essentially, the court determined that FAPE was not contingent on the child's disability label, but whether the IEP addressed the child's unique needs. This case provides a prime example of an IEP properly addressing a multitude of areas unrelated to the child's classification, which was listed as hearing impairment. More importantly, the court ruled that addressing all of the child's unique needs is what districts are required to do.

### ***Baldwin Park Unified School Dist.***

In *Baldwin Park Unified School District (CA)*, 109 LRP 22925 (SEA CA, January 7, 2009), the student received special education services in the categories of autistic-like behavior, speech and language disorder, and a significant cognitive impairment. The student also had a history of a hearing impairment, but auditory services had stopped because the district failed to pay the provider. The hearing officer stated, "A district is required to identify a student's unique educational needs and to provide special education and related services designed to meet those needs." The student had a unique need in the area of auditory sensitivity, which the district failed to address in the IEP. "The weight of evidence thus showed that the District's failure to address Student's unique need for audiological services interfered with his education and denied him a FAPE." The student was also having increased behavioral difficulties, but "the District did not address his unique need for behavior intervention services and a behavior intervention plan (BIP)." As a result, the hearing officer ruled the district failed to design an IEP tailored to meet the student's unique needs in the areas of auditory intervention services and behavior intervention for the 2006-07 and 2007-08 school years.

### ***Lewis Central School Dist.***

*Lewis Central School District*, 42 IDELR 247 (Iowa, January 9, 2005) addressed a student's unique needs from the perspective of a disciplinary situation. The student, 17 years old, had been on an IEP for Attention Deficit Disorder and Specific Learning Disabilities. He had been involved with using illegal drugs. He was caught with a pipe at school. This led to a contract wherein the student agreed to monthly drug screening, weekly counseling, community service, not skipping any class, and attending AA meetings weekly until graduation. A functional behavioral assessment was conducted and a behavior intervention plan was created. Two months later, he failed a drug test. The district sought to expel, found his behavior was not a manifestation of his disability, and, because of the drug-related issues, placed him in a 45-day interim alternative educational setting (IAES), which consisted of six hours of homebound instruction per week. An out-of-district placement was proposed, which the parents found inappropriate, but agreed to pending the due process hearing they requested. The district took the position that if the student returned to Lewis Central School District, it would proceed with expulsion proceedings. The student did not like the new placement and returned to homebound services.

In reviewing the facts, the hearing officer noted the behavior plan listed concerns as being tardy to classes, not doing independent work, and possessing drugs or drug-related materials at school. However, none of the positive behavior interventions contained in the plan referred to the student's drug-related behaviors. The only reference was under "consequences," where it stated the student was on a behavior contract with the principal and violation of it will result in predetermined consequences. Similarly, while the reason for conducting the functional behavioral assessment was the drug-related activity, the assessment did not address issues of drug-related activities, causes, motivation, or things that could be done to help the student stay sober. Furthermore, an interim alternative educational setting must include services and modifications to address the behavior and be designed to prevent the behavior from recurring, but no services were provided to address the student's drug-related behaviors. The hearing officer also found the school did not have authority to place the student in the IAES for 45 school days because that is allowed only if a student knowingly possesses or used illegal drugs at school or at a school function and there was no evidence the student ever did.

The district claimed it did not address the student's drug-related behavior because the parents did not advocate for such services and may have opposed them. The hearing officer stated even if true, that does "not negate the IEP team's responsibility to address all relevant areas related to a student's special education needs. ... The school cannot wait for a parent to bring a child's problem to their attention. The school has the responsibility to find and meet the needs of students, based upon the assessment data, even if a parent does not agree." The hearing officer ruled the district had failed to provide the student a free appropriate public education because it failed to address the drug-related behaviors significantly impacting the student's educational program. This case presents a good example of how a district was aware of a student's needs, but failed to address those unique needs in the IEP.

---

***Serving Children's Unique Needs***  
***(Continued on page 11)***



# Standardized Testing and IDEA: Impacts on Children

by Amber Hardy

## No Child Left Behind

In January of 2002, President George W. Bush signed into law the No Child Left Behind Act (NCLB).<sup>1</sup> The Act's primary goal set a deadline for schools to ensure all children be proficient or better in reading and math twelve years from enactment.<sup>2</sup> NCLB was essentially a reauthorization of the Elementary and Secondary Education Act (ESEA), which expanded access to education for many low-income students with its enactment in the mid-1960s.<sup>3</sup> ESEA provides federal education funding (usually referred to as Title I funds).<sup>4</sup> Like any other federal funding, Title I funds come with restrictions and caveats. ESEA has been reauthorized and changed over the years and 2002 was no exception.

NCLB was almost a complete overhaul of the American school system. The Act focused on accountability; that is, holding teachers, schools, and states accountable for failing to educate children.<sup>5</sup> NCLB required each state to develop a plan that created challenging academic standards, as well as held all local educational agencies and public elementary and secondary schools responsible for meeting or exceeding the standards.<sup>6</sup> States tailored these plans to make "adequate yearly progress" as required by NCLB.<sup>7</sup> The statutes provided some guidance to the states on how to define adequate yearly progress (mostly through measurable testing), but the states were ultimately responsible to define it for themselves.<sup>8</sup> NCLB required states to set separate measurable objectives, *i.e.*, standardized test goals.<sup>9</sup> As part of the adequate yearly progress requirement, measurable objectives

applied to all students with specific language applying the law to certain subsets of students. One subset was students with disabilities.<sup>10</sup> Measurable objectives were required to "identify a single minimum percentage of students who were required to meet or exceed the proficient level on the academic assessments that applies separately to students with disabilities."<sup>11</sup>

NCLB required schools to improve annually.<sup>12</sup> With regard to students with disabilities, the Act mandated that schools had to show students were meeting or exceeding the measurable objectives set by the state unless the percentage of students failing to meet the standard decreased by ten percent from the proceeding school year and the students made progress in academic indicators such as graduation rates.<sup>13</sup> One other caveat NCLB placed on schools was that at least ninety-five percent of students with disabilities had to take the academic assessments with any necessary accommodations as required by the Individuals with Disabilities Act (IDEA).<sup>14</sup> Any school failing to make annual progress faced penalties, including spending Title I funds to transport children to other schools that were not failing within the district and complete restructuring.<sup>15</sup>

Regardless of the type of disability, all children within the 95 percent took the same academic assessments.<sup>16</sup> Schools assessed children every year in grades three through eight and once during grades ten through twelve.<sup>17</sup> Assessments measured

**NCLB/ ESSA**

**(Continued on page 12)**

## Serving Children's Unique Needs

**(Continued from page 10)**

### ***D.M. v. City Sch. Dist. of the City of New York***

Finally, a very recent decision was issued by a federal district court in New York. In *D.M. v. City School District of the City of New York*, 67 IDELR 4 (S.D. N.Y. 2016), a child was on an IEP under the Speech-Language classification. She was described as having low muscle tone, poor upper body trunk stability, distractibility, delayed fine motor skills, language deficits, anxiety, and distractibility. The IEP reflected the student's needs in the areas of cognition, academics, language processing, social/emotional functioning, sensory processing, attention, and motor skills. The IEP called for 30 minutes of individual and 30 minutes of group occupational therapy per week, 30 minutes of individual and 60 minutes of group speech-language therapy, and one 30-minute group session of counseling. While the IEP services were found appropriate, the court found that placement at the community school was not appropriate because she needed a small class at a small therapeutic school to make educational progress due to her anxiety and distractibility. This case provides another good example of how, despite the child's disability classification (Speech-Language), the IEP provided services in many areas unrelated to speech or language based on

the child's unique needs. Furthermore, the need for placement in the private school was determined based on the student's emotional needs, not her Speech-Language impairments.

## Conclusion

Beginning with the purpose of the law, IDEA requires schools to provide special education services to meet the unique needs of each child with a disability. IDEA further addresses districts' responsibilities for addressing each child's unique needs through both the evaluation and IEP processes. While statutes and regulations can be open to interpretation, the federal DOE and the State of South Dakota have both provided guidance describing how special education services cannot be limited to those linked to the child's disability classification. Applicable case law further interprets how schools must address each child's unique needs and how the child's disability classification is not relevant to that determination.

If parents 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. We also suggest parents contact SDAS if they need assistance in addressing this issue, as well as if they receive a policy or other documentation following their request to their particular school district.

students' abilities in math, reading, and science to determine if adequate early progress has been made to meet the states' challenging achievement standards.<sup>18</sup> NCLB allowed for students with disabilities to be given "reasonable adaptations and accommodations" as defined by IDEA.<sup>19</sup>

### **Controversy Over NCLB**

Across the country, controversy surrounded NCLB. Some of the more controversial topics related to the standardized testing involved students with disabilities; specifically, that students with disabilities were expected to meet the high standards that some of their non-disabled peers struggle with reaching. Given the added pressure of taking a standardized test, NCLB opponents focused concerns on the effect of having to take the test on students with disabilities who were already struggling.

NCLB complied with IDEA in that students protected under IDEA may have reasonable accommodations if needed.<sup>20</sup> Accommodations helped to, "level the playing field so that the test measures what a student knows and can do and not the effect of the child's disability."<sup>21</sup> The guide written for parents of students with disabilities gives an example of how these accommodations are to work:

For example, if the reading assessment is supposed to measure how well a student can decode text, then reading the test aloud to the student as an accommodation would result in an invalid score on the test because the accommodation would interfere with the skill being measured. If, however, the skill is comprehension of text, reading the test aloud might be a permissible accommodation.<sup>22</sup>

Therefore, an accommodation for a child whose disability affected the decoding of text, such as Dyslexia, would not be appropriate as decoding is the exact thing the test sought to measure. The scores of students with disabilities are then measured against his or her non-disabled peers' scores to determine proficiency. Students with severe cognitive disabilities fail before the test begins because they will never be able to reach the proficiency levels of their peers.

In addition to offering accommodations, NCLB allowed schools to elect to have no more than five percent of students with disabilities per grade take an alternate assessment based on alternate achievement standards.<sup>23</sup> These assessments tested the students progress in his or her grade level, but reduced the "breadth, depth, or complexity, and is judged against a different definition of proficiency from the regular assessment."<sup>24</sup> Schools determined if they would offer alternate assessments that they included in the school's annual yearly progress, but again, NCLB limited how many students could take such tests.<sup>25</sup> IEP teams decided whether a student could take this alternate test instead of the regular standardized assessments.<sup>26</sup> With limits on the number of student scores that could be used using the alternate test, students faced the danger of pressure from the school to have the student take the regular standardized test if the limit on alternative tests had already been reached. The limits imposed by NCLB were based on statistical information about special needs children and were not specific to a given school district.<sup>27</sup> Thus, schools having a greater percentage of students with more severe disabilities than the statistical average had no recourse to have the limit adjusted to fit the students they served.

One extremely disturbing issue when it comes to standardized testing is the possibility of a student not graduating with a high school diploma if tests are not passed.<sup>28</sup> Thankfully, South Dakota does not impose any further requirements for high school graduation in addition to the required courses and number of credits.<sup>29</sup> Some other states, however, require passing the same assessment used to determine school compliance with NCLB as a requirement for high school graduation.<sup>30</sup>

With such high-stakes testing putting pressure on children with disabilities, a great debate began as to whether the testing created a positive effect on these children or whether such pressure created only negative environments. Proponents argued that holding children with disabilities to the same standards as their non-disabled peers was actually beneficial to these students.<sup>31</sup> Barbara Trader, the executive director of a prominent disabilities advocacy group told *The Atlantic Monthly*, "Fundamentally, the problem that students with disabilities face in schools is that people have such low expectations for what they can achieve."<sup>32</sup> The same article cited a study conducted by the U.S. Department of Education, which found that students attending elementary and middle schools with higher accountability requirements actually had more children deliberately moved to regular classrooms when compared to schools subject to less accountability.<sup>33</sup>

Critics of NCLB said that the assessments set up students with disabilities for failure.<sup>34</sup> This camp conceded that higher expectations had a positive effect on special education students, but they pointed out the higher expectation was also a double-edged sword because students knew they would be unable to meet the expectation required as they were taking the tests.<sup>35</sup> Additionally, because standardized tests were "one size fits all," the tests did not take into consideration any progress made in the child's IEP.<sup>36</sup> This was a bit strange considering the reason most students were on IEPs was because they already were not meeting the standards of their peers, yet they were expected meet those standards on the assessment.<sup>37</sup> This "doomed to fail" situation led to horror stories of children becoming so frustrated with standardized tests that they would go from top performers to low performers when assessment time came and others who would have emotional breakdowns while taking the tests.<sup>38</sup>

### **Every Student Succeeds Act**

In response to the public outcry over NCLB's testing requirements, Congress recently passed the Every Student Succeeds Act (ESSA). President Obama signed ESSA into law on December 10, 2015. Most ESSA provisions went into effect immediately.<sup>39</sup> The new law still requires standardized testing. However, one of the main differences from NCLB is testing requirements for students with disabilities. It still requires schools to use the same standard assessments for all students, but specifically requires schools to provide all appropriate accommodations for children covered under IDEA, as well as students covered under any other acts.<sup>40</sup> Although NCLB and ESSA seem to be requiring the same accommodations, ESSA is more expansive because it includes accommodations for students with disabilities covered by laws other than IDEA and accommodations, "such as interoperability with, and ability to use, assistive technology."<sup>41</sup> ESSA also contains an entire section specifically dealing with alternate assessments.<sup>42</sup>



One of the most significant changes regarding alternate assessments is getting parents more involved with testing requirements. Under ESSA, schools must inform all parents of students with recognized disabilities under IDEA of two things during IEP meetings: “That their child’s academic achievement will be measured based on such alternate standards” and “how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.”<sup>43</sup> The other significant change that ESSA places on alternative testing is the requirement that the teachers giving the exams know how to administer them and that they appropriately use any accommodations during testing.<sup>44</sup> NCLB failed to contain any provisions on parents’ right to be informed, nor any provisions for teachers administering the alternate assessments.

ESSA contains two special rules related to alternative assessments.<sup>45</sup> First, it explicitly states that the decision to have a child participate in an alternative assessment is completely in the hands of the child’s IEP team.<sup>46</sup> IEP teams determined if the students could be exempted from standardized testing under NCLB, but there was an inflexible cap of five percent of students in a given grade who could be exempted.<sup>47</sup> Second, ESSA caps students being given alternate assessments, but it gives districts exceeding the cap the ability to justify to the state’s educational agency why it must exceed the cap.<sup>48</sup> States may also request a cap waiver from the U.S. Secretary of Education.<sup>49</sup>

ESSA is the future. NCLB arguably improved conditions for students with disabilities by placing high expectations on them. The problem with NCLB was that the expectation failed to take into account any progress that a student with a disability was making on a daily basis as part of an IEP. Too much emphasis was placed on forcing children to take standardized tests they may not have had the capability to understand and the caps on non-participation numbers were much too rigid. Congress has taken some of the positive aspects of NCLB and incorporated them into ESSA, which will reduce the stress of testing on students with disabilities by requiring specific

accommodations and allowing more children with the severe cognitive abilities to be exempt from testing.

<sup>1</sup>Alyson Klein, *No Child Left Behind: An Overview*, Education Week (April 10, 2015), <http://www.edweek.org/ew/section/multimedia/no-child-left-behind-overview-definition-summary.html>.

<sup>2</sup>20 U. S. C. § 6311.1111(b)(2)(F).

<sup>3</sup>U.S. Dept. of Education, Every Student Succeeds Act (ESSA) | U.S. Department of Education Ed.gov (2016), <http://www.ed.gov/ESSA> (last visited Mar 8, 2016).

<sup>4</sup>See Klein, *supra*.

<sup>5</sup>See U.S. Dept. of Education, *supra*.

<sup>6</sup>See § 6311.1111(b)(1)(D).

<sup>7</sup>*Id.* at (2)(B).

<sup>8</sup>See *Id.* at (2)(C).

<sup>9</sup>See *Id.* at (G).

<sup>10</sup>See *Id.* at (2)(C)(v)(II)(cc).

<sup>11</sup>*Id.* at (2)(G)(iii).

<sup>12</sup>*Id.* at (2)(I).

<sup>13</sup>See *Id.* at (2)(I)(i).

<sup>14</sup>See *Id.* at (ii).

<sup>15</sup>See *Id.* at § 1116(b)(9), (8).

<sup>16</sup>See *Id.* at § 1111(b)(3)(C)(i).

<sup>17</sup>See *Id.* at (b)(3)(C)(v)(I).

<sup>18</sup>See *Id.* at (3)(A).

<sup>19</sup>*Id.* at (C)(ix)(II).

<sup>20</sup>See *Id.* at (b)(3)(C)(xi)(II).

<sup>21</sup>Candace Cortiella, *NCLB and IDEA: What Parents of Students with Disabilities Need to Know and Do*, Pg. 14, Aug. 2006 at 14, available at <http://www.cehd.umn.edu/nceo/onlinepubs/parents.pdf>.

<sup>22</sup>*Id.* at 15.

<sup>23</sup>See *Id.* §1111(a)(3)(C)(ix)(II).

<sup>24</sup>Cortiella at 15.

<sup>25</sup>See *Id.*

<sup>26</sup>See *Id.*

<sup>27</sup>See *Id.*

<sup>28</sup>See *Id.* at 16.

<sup>29</sup>See ARSD 24:05:27:12.

<sup>30</sup>See Cortiella at 16.

<sup>31</sup>Carly Berwick, *No Child Left Behind’s One Big Achievement?*, The Atlantic Monthly, July 23, 2015, available at <http://www.theatlantic.com/education/archive/2015/07/no-child-left-behind-one-big-achievement/399455/>.

<sup>32</sup>*Id.*

<sup>33</sup>*Id.*

<sup>34</sup>Rebecca Gensler, *Effects on No Child Left Behind Act of Special Education Regarding Standardized Testing*, Law and Disorder, Jan. 2006, available at <https://scholarworks.iu.edu/dspace/bitstream/handle/2022/193/gensler+effects+of+no+child.pdf;jsessionid=D55CFB17848CCB30EB91CD40923D5DC4?sequence=1>.

<sup>35</sup>See *Id.* at 12.

<sup>36</sup>See *Id.* at 13.

<sup>37</sup>See *Id.*

<sup>38</sup>See Berwick.

<sup>39</sup>See U.S. Dept. of Education.

<sup>40</sup>See *Id.* at § 1111(b)(2)(B)(vii)(II).

<sup>41</sup>*Id.*

<sup>42</sup>See *Id.*

<sup>43</sup>See *Id.* at (D)(i)(II).

<sup>44</sup>See *Id.* at (V).

<sup>45</sup>See *Id.* at (b)(2)(D)(ii).

<sup>46</sup>See *Id.* at (I).

<sup>47</sup>See *Id.* at (b)(2)(H)(I)(ii).

<sup>48</sup>See *Id.* at (b)(2)(D)(ii)(II).

<sup>49</sup>See *Id.* at (IV).

## Law School Practicum Continues in Sioux Falls Office

South Dakota Advocacy Services’ relationship with the University of South Dakota School of Law continued into the spring semester, as SDAS again provided a semester-long Disability Rights Practicum course for students at its Sioux Falls Office.

This semester, Amber Hardy, a third-year law student, has participated in the practicum. The practicum involves learning about disability law (primarily special education), writing papers, and working on SDAS cases. It is unknown at this time if a similar opportunity will be offered in the fall.



Amber Hardy

# Disability Rights Legal Clinic

Do you have questions about  
disability rights?

If so, please join us for a  
**FREE LEGAL CLINIC**

on

**FRIDAY, APRIL 22, 2016**

**12:00PM to 4:00PM**

@

**RAMKOTA**

**Crystal Room**

3200 W Maple St, Sioux Falls, SD 57107

*SDAS attorneys and staff, along with volunteer attorneys from the community, will be available to answer questions about laws affecting people with disabilities (IDEA, Fair Housing, the ADA, etc.)*

**ADVOCACY**  
SERVICES

**South Dakota Advocacy Services**



# Shopping With Ease

by Carrie Geppert

**C**aroline's Cart is a shopping cart created for children with disabilities. It provides parents and caregivers a viable option for transporting a child through a store while grocery shopping, without having the impossible task of having to maneuver a wheelchair and a traditional grocery cart at the same time. It is named after Caroline, the daughter of Drew Ann and David Long. Drew Ann saw the need for Caroline's Cart after realizing her daughter would outgrow a typical shopping cart.

Recently, a parent in the Sioux Falls area reached out to a local Hy-Vee store and requested Caroline's Cart for her shopping experience. The Hy-Vee store was quick to respond and there are now two Hy-Vee locations in Sioux Falls that have Caroline's Cart available. More locations are expected to follow.



Word has spread quickly about how wonderful Caroline's Carts are for these unique needs. So much so, that

Target has announced it will offer at least one Caroline's Cart at most of its U.S. stores starting in March 2016.

## ***SDAS Intake Process***

***(Continued from page 6)***

If the caller is seeking only an address or phone number, the administrative staff person answering the phone at any SDAS office may provide that information, if known, and record the I&R on the DAD system.

Calls coming into the Pierre office will be transferred to the Intake Staff. If the call occurred outside intake hours or if the Intake Specialist is not available, the caller will be told that Intake Staff will return a call within two days. Pierre administrative staff will notify the Intake Specialist of the call via email.

The Intake Specialist will gather all required information and record it onto the DAD system. In addition to demographic information, the Intake Specialist will question the caller sufficiently to ascertain the person's issue(s). The Intake Specialist will inform the caller that the situation/question will be taken to the Intake Team for review and the Intake Specialist will be back in touch in typically 1-3 business days.

It is important for the caller to understand that the role of the Intake Specialist is primarily that of investigator. The Intake Specialist should share the following information with you: His or her name and position at SDAS; that he/she is not an attorney (unless an attorney happens to be filling in); that SDAS has not agreed to assist you at this point; and that as a client-driven agency, you can decide you do not want assistance and terminate the call at any time. Because the Intake Specialist is not an attorney, the Intake Specialist cannot give any legal advice. The Intake Specialist will ask you about any deadlines that may apply to your situation. All calls are then reviewed by the Intake

Team before any decisions are made about providing you with representation.

The Intake Team makes determinations about the caller's federal program eligibility and whether the issue being presented is eligible for program services based on specific SDAS priorities. The decision to assign or decline the request for services as a case will be made utilizing the following procedure:

1. The Intake Team will review all new intakes, utilizing the information gathered by the Intake Specialist and recorded on the DAD system.

2. The Intake Team will determine if the issue appears to be one that can be addressed through I&R, and if so, what information will be provided. The Intake Specialist will contact the caller to provide this information.

3. The Intake Team will determine if more information is required. If more information is required, the Supervising Attorney will assist the Intake Specialist to identify and seek the required information.

4. The Intake Team will determine if a potential conflict of interest exists and how to respond to it.

5. The Intake Team will determine if the potential client meets the case acceptance criteria based on federal eligibility requirements and program priorities.

6. If the Intake Team determination is that the person is eligible for services, the team will assign the service request to an appropriate case handler, taking into consideration factors such

***SDAS Intake Procedure***  
***(Continued on page 20)***

# Year 24 Nearing Graduation

by Sandy Stocklin Hook

*Jeopardy contestant: "I'll take Name that Training for \$200."*

*Jeopardy host: "It brings together leaders from throughout South Dakota to share ideas, challenges, and find solutions."*

*Jeopardy contestant: "What is SD Partners in Policymaking?"*

**W**ith five of six sessions completed, Year 24 of SD Partners in Policymaking is training the next set of leaders in South Dakota - leaders who will challenge the status quo, leaders who will do research and leave no stone unturned, leaders who will not accept "no" for an answer, and leaders who will change the attitudinal barriers facing individuals with disabilities.

Over the past five months, the 31 members of Year 24 have gathered in Pierre, one weekend a month, to learn to be self-advocates and leaders. They have learned how to empower themselves and others. The class theme/motto for Year 24 is "EmPOWERment ... Together We Can Do Great Things."

## DECEMBER TRAINING

SDAS Legal Affairs Director, John A. Hamilton of Sioux Falls, presented on the Individuals with Disabilities Education Improvement Act of 2004 - IDEA. Hamilton helped the class understand the law and the IEP process and answered questions regarding parental rights. He reminded the group that silence is NOT golden when attending meetings because "oftentimes you, the parent, are the only



**Melissa McClelland, Catherine Godes, and Emily Weber providing testimony before the mock legislative panel**

advocate for your child at IEP meetings." Hamilton also discussed *How To Be A Superhero For Your Child* and explained discussion points that apply equally to parents and self-advocates.

Dr. Patrick Schwarz is a professor at National-Louis University in Chicago. Dr. Schwarz provided insight from actual experiences for successful inclusion of children with disabilities in educational settings. "Inclusion means everyone belongs everywhere - in our schools, in our community, in our work places. Successful school inclusion can lead to successful community inclusion." He encouraged the class to be creative and think outside the box when it comes to working toward inclusion.

Tim Neyhart, SDAS Executive Director, discussed transition and how it is never too early to start thinking about transition and formulating a plan. "Parents, talk to your students about what

they want to do and what supports they will need to accomplish this goal," stressed Neyhart. "Take your child to the IEP meeting. Let their voice be heard."

## JANUARY TRAINING

The January session focused on how to influence the legislative process. There were several opportunities to learn about meeting and working with legislators and the importance of providing public testimony. Presenter David Hancox, a lobbyist from Minnesota, told the class, "No one can tell your story like yourself. You have the details, the knowledge, the heart. You can be an effective lobbyist for your cause. Don't be afraid to talk to your elected officials, they work *for you*. They are regular people. You are a resource to legislators on all levels and what you bring to the table is important." He shared pointers on providing effective testimony, such as always telling the truth and admitting when you do not know the answer, but volunteering to find the answer. He also discussed campaigns and coalition building and how to use the media effectively.

After an evening and morning of preparation, the class used their newly-acquired testimonial skills to provide mock testimony on current bills before the SD Legislature. Helping the class to calm their nerves and give tips and pointers were "bill coaches," Gail Eichstadt, Emily Garcia, and C.J. Moit of SDAS; Robert J. Kean, Dennis Hook, Arlene Poncelet, and



**Judy Shields Him, Amanda Hemmestad, Jennifer Nesseim, and Abbey Merchen testifying before the mock legislative panel**

***Partners in Policymaking***  
*(Continued on page 17)*



## ***Partners in Policymaking***

***(Continued from page 16)***

Craig Eichstadt of Pierre; and Tim Conner of Brookings. Several of the coaches are Partners graduates: Craig Eichstadt, Year 14; C.J. Moit, Year 12; Emily Garcia, Year 23; and Tim Conner, Year 7. Kean is the former Executive Director of SDAS. Poncelet is the Executive Director for the South Dakota Council on Developmental Disabilities. Hook is a former lobbyist at the SD Legislature. Gail Eichstadt is the Senior Attorney for SDAS. Garcia and Moit are program directors of the PADD and PAVA programs, respectively.



**David Colling sharing a homework assignment**

South Dakota legislators volunteered for the mock testimony panel, representing a joint committee of the legislature. It included Representatives Paula Hawks of Hartford, and Jacqueline Sly and Brian Gosch of Rapid City. Hawks serves as a House Minority Whip and Gosch, also an SDAS Staff Attorney, is the House Majority Leader. Senators on the panel included Angie Buhl-O'Donnell of Sioux Falls, Mike Vehle of Mitchell, Assistant Senate Minority Leader Troy Heinert of Mission, and Senate Minority Leader Billie Sutton of Burke. The class also had the opportunity to view the House and Senate in action, be welcomed by both chambers, and meet for a photo with Governor Dennis Daugaard.

Other training included Tim Neyhart and Shelly Pfaff, Executive Director for SD Coalition of Citizens with Disabilities, speaking about the Americans with Disabilities Act. Robert Kean explained the process of using the Legislative Research Council's legislative web page to track bills, view committee action, etc.



**Miranda Thorson, Sammy Voegelé, Chris Goodfellow, and Brendon Sato providing testimony before the mock legislative panel**

## **FEBRUARY TRAINING**

Robert Kean opened this session with a history of Social Security. He described how it started and where the program is at today.

Continuing the political theme from January, the class had a panel presentation of types of local government. Panel members were Laurie Gill, Mayor of Pierre; Hughes County Manager, Kevin Hipple, of Pierre; Cari Leidholt, Pierre School Board; and Tribal Affairs employee, Janet Jessup. The panel described the similarities and differences in their governmental bodies, how individuals are invited to attend meetings, and how they can get on the agenda. They all stressed and encouraged the Partners participants to be active in their local governmental agencies. They provided information on the importance of effective communication.

SDAS Protection and Advocacy Assistive Technology (PAAT) Program Director, Carrie Geppert of Sioux Falls, a Year 23 graduate, highlighted the PAAT Program and answered questions. Pat Czerny of DakotaLink in Rapid City gave a hands-on presentation demonstrating

assistive technology devices and how they can make the difference between being dependent and becoming independent.

Jim Kellar of Freeman taught how to have effective meetings, how to be in control of the meeting without being aggressive, and how time management can make the difference between a successful or out-of-control meeting. He shared the importance of including everyone in the meeting, how to listen to ideas, how to effectively summarize what you heard, and how to get a group to work as a team. He spoke of self-advocacy skills and the importance of knowing who you are and what you want. Kellar said, "It is important your voice be heard. You need to learn the importance of negotiating. This is a skill that will last a lifetime and create allies, not adversaries."

Kellar also introduced the Talking Circle, which gives everyone an equal opportunity to speak without interruptions or judgment. A talking piece is shared among the participants and a person can only speak when in possession of the

## ***Partners in Policymaking***

***(Continued on page 19)***



**Legislative Panel (l-r): Senators Billie Sutton; Troy Heinert; Angie Buhl-O'Donnell; and Mike Vehle; Representatives Brian Gosch; Paula Hawks; and Jacqueline Sly.**



# Access Authority ... A Musing

by Emily Garcia

One of the statements I keep on my desk reads, “...may God bless you with enough foolishness to believe you can make a difference in the world, so that you can do what others claim cannot be done to bring justice and kindness to all.”

This statement is something I keep in the back of my mind as I go about my daily work. I suppose that it was this belief system that brought me to work at South Dakota Advocacy Services (SDAS). SDAS is the protection and advocacy agency (P&A) for people with disabilities in South Dakota. Being the P&A means that SDAS is charged with investigating allegations of abuse or neglect against people with disabilities in South Dakota.

Our mission at SDAS states, “To protect and advocate the rights of South Dakotans with disabilities through legal, administrative, and other remedies.” One of the mechanisms that we use to fulfill our mission is our access authority. Within the Protection and Advocacy Developmental Disabilities (PADD) Program, that access authority is contained within the Developmental Disabilities Assistance and Bill of Rights Act (DD Act), at 45 CFR § 1386.25 – *Access to Records*. Access authority means that SDAS is provided extraordinary access to people with developmental disabilities in facilities where they receive services. When SDAS has received a report of abuse or neglect or has probable cause to believe individuals with disabilities have been subject to abuse or neglect, staff must be provided access to records within three business days from when the records are requested. SDAS staff must be able to acquire records within 24 hours in cases of death or when there is reason to believe individuals are in immediate and serious jeopardy. Similar access authority is provided within the Protection and Advocacy for Individuals with Mental Illness (PAIMI) and Protection and Advocacy of Individual Rights (PAIR) Programs.

You may be wondering what this means for you in your everyday life. The truth is, probably nothing. However, if you are a person with a disability subject to abuse or neglect, it could mean a lot. SDAS and P&As in other states have utilized their access authority to advocate for policy changes within facilities and expose systemic abuse and neglect of individuals with disabilities. The following paragraphs describe examples of how SDAS and other P&As have exercised their access authority in order to protect people with disabilities.

## Death Investigation in New York

Disability Rights New York (DRNY) initiated an investigation into an independent residence for people with developmental disabilities following the death of a man (M.H.) who was in its care. DRNY exercised its access authority to obtain M.H.’s records from the facility. The DRNY staff reviewed records and interviewed staff at the facility (also allowed under provisions of the law). DRNY issued a public report enumerating the facility’s failures, which showed systemic problems at the facility with regard to mandated abuse/neglect reporting, medical care, in-house investigations, and staff training.

## Uncovering Criminal Activity

SDAS received an abuse report from a previous client. The client reported that staff at the facility where he lived provoked him into having dangerous behaviors. The client’s mother reported injuries due to these behaviors. SDAS initiated an investigation immediately. Access authority allowed SDAS to interview facility staff, where it was revealed that abuse was taking place in the facility. SDAS contacted the South Dakota Division of Criminal Investigation (DCI) and the Medicaid Fraud Unit. A criminal investigation was initiated by DCI as a result of the report from SDAS. SDAS’ access authority provided the opportunity for this situation to be investigated properly and for law enforcement to take action in order to protect the people who reside in the facility.

## Neglect Causes Near-Drowning

SDAS received a report from The North Dakota Protection and Advocacy Project (NDPANDA) regarding a child who was previously attending a specialized school in South Dakota. NDPANDA received the report because the child was currently on a ventilator in a hospital in Fargo, ND, due to a near-drowning incident. SDAS exercised its access authority to obtain records from the school. The child’s educational plan included therapy in a hot tub. The records from the school provided information that the child was improperly placed in the harness meant to assist in keeping his head above water. The records also proved staff members failed to adequately supervise the child. These two acts resulted in the near-drowning of the child. SDAS worked with the school to initiate training for staff on proper use of the harness system and supervisory practices resulting in a safer facility for all students. It is possible that neither of these actions would have taken place if SDAS did not have the ability to access the child’s records.

The use of access authority is an essential component to protecting the rights of people with disabilities. These provisions in the law allow SDAS to identify and take action to address issues affecting people with disabilities in South Dakota. In the coming year, SDAS intends to enhance how we exercise this authority in order to effectuate sea-change for individuals we are charged with protecting. SDAS plans to implement a monitoring process designed to gather information to allow SDAS to address concerns about abuse and neglect in a more systematic way. It is in this way that SDAS can work to bring about a safer environment for people receiving services in the state.

## SDAS Seeks Public Input

South Dakota Advocacy Services sets priorities/goals for the fiscal year on an annual basis. Our priorities direct the work the agency does during the fiscal year. The current priorities for each component program are on our website, [www.sdadvocacy.com](http://www.sdadvocacy.com). We invite the public to comment and offer suggestions for the direction of SDAS’ work for the coming year. Please go to our website and click the “Public Input” tab at the top of the home page and then the survey link.

## Partners in Policymaking

*(Continued from page 17)*

talking piece. When the holder of the piece is finished speaking, the piece is passed to the next person in the circle. The participants were taught to listen with open ears and open hearts. Kellar stressed, "Listening is an art and sometimes listening is a lost art. You need to listen and respect others as they speak. If you are a good listener, you can help affect attitudes, lives, changes, and personalities."

### MARCH TRAINING

Tim Neyhart, Executive Director of SDAS, continued the Social Security training by discussing who qualifies and why, and what happens when a Social Security recipient returns to work.

Dr. Wayne Duehn of Arlington, TX, made his 18th trip to present to SD Partners in Policymaking. He explained how to detect abuse and neglect, both physical and sexual. He discussed where, how, and to whom it should be reported, the profile of the perpetrator, and how abuse and neglect occurs everywhere, and "yes, even in South Dakota." He went on to say, "Sexual and physical abuse of our elderly, children, and individuals with disabilities is on the rise and you need to know the signs and how to stop it."

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

Dennis Hook, Pierre, Senior Master 4<sup>th</sup> degree black belt in Tae Kwon Do, taught Tai Chi and self-defense moves that can be used by everyone, including those with limited movement and mobility. With assistance from Gabby Thompson of the Pierre Tae Kwon Do Club, he also gave a Child Abduction Prevention Seminar.

Desiray Nelson of Onida (Year 20) and Angela Lisburg of Pierre spoke about the Child Advocacy Centers in South Dakota (CACSD). CACSD is an organization that promotes the development, cultural awareness, growth, and continuation of child advocacy centers in South Dakota through education and training, mentoring, collaboration, advocacy, development of child advocacy centers, and legislation.

The sixth and final session of Year 24 will be held April 22-23, 2016, at the Ramkota Hotel in Sioux Falls. The weekend includes continuing education, Common Grounds, and the graduation banquet and ceremony.

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

## New SDAS Fiscal Manager

Ona Arnold joined the SDAS team on Feb 17, 2016, as the new Director of Finance and Administration (Fiscal Manager). She is located in the Pierre office. Prior to working for SDAS, Ona worked for seven years as the Business Manager of the Capital Journal newspaper in Pierre.

Ona received her Masters in Business Administration (MBA) in 2009 and Bachelors in Business Administration/Office Management in 2005, both from Chadron State College in Chadron NE.

Ona has lived in Pierre since 2006 with her husband, Jason, who works for the South Dakota Department of Transportation. Ona has two children. Her son, Robert, is ten years old and loves to play baseball in the summer and compete in Lego Robotics in the winter months. Her daughter, Raeah, is seven



years old and loves to do most anything, but is currently participating in gymnastics. Ona enjoys fishing, going hunting with her family, and being out in the sun. Ona's hobbies include cooking, playing cards, and being around family and friends.

## Myra Vetter Retires from SDAS

**M**yra Vetter retired from South Dakota Advocacy Services (SDAS) on March 31, 2016. Myra started working for the South Dakota Advocacy Project on a contractual basis in 1983. Her role with the agency evolved as the agency grew. She moved from working on a contract to working part-time, and then moved to the full-time position of Fiscal Manager in 1992.

Myra piloted the fiscal affairs of the agency through the addition of seven federal grant programs and the Partners in Policymaking grant. In addition to the federal grants, the agency changed from having five employees located in the Pierre office to having 20 staff members and three field offices. Myra established policies and procedures that have made it possible for SDAS to continue to operate and meet the needs of people with disabilities in South Dakota. These policies helped SDAS to operate even when the Federal Government experienced shut downs, long delays in



making grant award notices, and experienced the other fiscal issues associated with federally-funded grant programs. No staff was sent home and no offices were closed, even in very fiscally challenging times.

SDAS thanks Myra for her years of dedicated service, her attention to detail, and her unwavering ability to not be rushed by deadlines from other staff on particular issues. SDAS wishes Myra a long and healthy retirement.

**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](mailto:sdas@sdadvocacy.com)**  
**Website: [sdadvocacy.com](http://sdadvocacy.com)**

NON-PROFIT ORG.  
U.S. POSTAGE PAID  
Pierre, SD 57501  
Permit Number 238

## **CHANGE SERVICE REQUESTED**

### ***SDAS Intake Procedure*** ***(Continued from page 15)***

as: Staff caseload; geographic location of client; staff expertise; available hours in the appropriate program; and other caseload considerations. However, if a case needs to be assigned directly to an attorney, the Intake Team will contact the Legal Affairs Director for case assignment.

7. The Intake Team will determine if a case should be put on a waiting list.

8. The Intake Specialist will use e-mail to inform the case handler that a new client has been entered into the DAD system and is awaiting action.

9. The Intake Specialist shall inform the caller of the case assignment and that the advocate/attorney will contact the caller within three business days. If the Intake Specialist is aware the case handler cannot contact the client for over three business days (such as due to illness, being out of town due to work, being on annual leave, or some other unique circumstance), the Intake Specialist shall inform the client.

10. The Intake Specialist and/or the Supervising Attorney will monitor the

## ***Calendar***

- ◆ **April 22, 2016** - SDAS Disability Legal Clinic, 12:00-4:00, Ramkota Crystal Room, Sioux Falls
- ◆ **April 22-23, 2016** - Partners in Policymaking, Ramkota, Sioux Falls
- ◆ **April 29, 2016** - "Healing Voices" Screenings, Rapid City and Sioux Falls
- ◆ **May 6, 2016** - "Healing Voices" Screening, Aberdeen (see page 3)
- ◆ **June 8-9, 2016** - YAMWI Conference, Mount Marty College, Yankton; register at [www.yamwi.org](http://www.yamwi.org)
- ◆ **June 9-10, 2016** - Lighting the Way Conf., Augustana College, Sioux Falls

DAD system biweekly to assure that follow-up was conducted.

If your case is assigned to a case handler, this person will contact you. The staff person assigned will then send out a letter of understanding as to your issues and the services SDAS will provide and a release form for obtaining records as needed regarding your issue(s). The case handler will conduct the case management on your case under the supervision of an attorney.

If the Intake Team determines you are not eligible for services based upon program guidelines, the Intake Specialist will

inform you of that determination. You will also be provided SDAS' grievance procedure. The determination of your ineligibility will be documented on the SDAS data system and may be followed-up with correspondence if clarification or reiteration is deemed necessary.

This process will be followed in most instances when anyone contacts SDAS. The Intake process is developed to be uniform so that all callers will know what to expect and what timelines apply to the process after you call. If you have any questions about this article, you can call the toll-free number at 1-800-658-4782 or send an email to [sdas@sdadvocacy.com](mailto:sdas@sdadvocacy.com).