What is SD United?

by Dianna L. Marshall

South Dakota United for Hope and Recovery is a peer-run statewide education, advocacy, and support organization dedicated to sharing experience and knowledge of mental health recovery and wellness principles to the people of South Dakota. Because the organization is peer-run, it is directed by people with lived experience of extreme states, altered states, mental health issues and/or trauma. Through asking a series of questions, Dianna L. Marshall, PAIMI Program Director, obtained the following information from Jennifer Constantine, President of SD United for Hope and Recovery, in an effort to provide the public with information about this peer-run statewide organization in South Dakota.

How did SD United begin?

In the fall of 2006, Dr. Dan Fisher spoke at the Statewide NAMI Conference. Dr. Fisher is a person with lived experience himself, and is the executive director of the National Empowerment Center - one of five peer-run national technical assistance centers. These technical assistance centers provide support to newly forming peer-run organizations in states beginning to develop peer involvement as a means of giving people with lived experience a voice in their personal and collective recovery and wellness.

Some of the people who heard Dr. Fisher speak became interested in forming a statewide peer-run organization. A steering committee was formed in 2007 to create a statewide peer-run organization. The steering committee planned a statewide networking conference with assistance from the National Empowerment Center. This conference took place in the spring of 2008. The steering committee worked with the National Empowerment Center to apply for 501(c)3 non-profit status as “South Dakota United for...”

South Dakota United

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Hope and Recovery™ (SD United). This group also planned and implemented a statewide conference of consumers and providers, which took place in the spring of 2009. South Dakota United for Hope and Recovery received 501(c)3 non-profit status in July of 2009.

How is SD United funded?

Until September of this year, SD United has functioned without any funding exclusively belonging to the organization. The National Empowerment Center has a grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) to provide both monetary and infrastructure technical assistance. In September, SD United received one of six grants from the SAMHSA ADS Center’s “Campaign for Social Inclusion.” [The ADS Center is SAMHSA’s Resource Center to Promote Acceptance, Dignity, and Social Inclusion Associated with Mental Health.] The National Empowerment Center continues to use a portion of its funding to aid in the development of SD United.

How did you get involved with SD United?

In 2007, I started the first peer-run support group in South Dakota. The idea was formed because I was not getting the support I needed on the weekends when the mental health center was closed. In talking with others, I found that many had a similar need for after-hours support. I suggested we meet on the weekend to support one another. The group was formed and, as the support group grew, I also grew in my understanding of the need for involvement and empowerment of individuals receiving mental health services. I began my vision of individuals receiving services becoming involved in all aspects of the mental health system - providing their own advocacy, education, and support for one another on all levels. Imagine my surprise when I attended SD United’s 2009 conference and discovered a newly forming organization of like-minded individuals already in place, and applying for 501(c)3 non-profit status! I wouldn’t have to start from scratch - my vision was already becoming a reality. I was ecstatic and eager to become more involved. I was asked to become a member of the board and was voted on soon after the April 2009 conference. In April 2010, I was voted president.

What activities or projects is the organization currently involved in?

Through our SAMHSA ADS Center “Campaign for Social Inclusion” grant, we are providing a year-long teleconference series and forming a Speaker’s Bureau with the aim of sharing hope for mental health recovery and wellness among those affected by the experiences of extreme states, altered states, mental health issues, and/or trauma. The teleconference series covers information on recovery and wellness for a variety of audiences, including young adults (18-25), Native Americans, active military, and veterans. The teleconference series also includes more informal calls where peers can give and receive support over the phone. The Speaker’s Bureau portion of this work provides public speaking and video production training to selected
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applicants to aid in sharing their stories of hope. More information on applying for the Speaker’s Bureau and the topics for the teleconference series can be found on South Dakota United’s website, at www.southdakotaunited.org.

SD United is also beginning the process of reconnecting with general members and providing them with new resources. SD United also hopes to gain more input from general members on what they would like to see prioritized by the organization.

Are there any activities or projects that SD United has planned for the future?

SD United is hoping to provide emotional CPR training to individuals interested in supporting a person in emotional distress through that experience. That training would take place in the spring of 2012. SD United is also hoping to plan and host another statewide conference in 2012. Check SD United’s website or become a member to receive updates on new developments as they become available.

How can I become a member? Is there a membership fee?

There is no fee at this time for membership. One can become a member by filling out a membership form on their website, at www.southdakotaunited.org, or one can request a membership form by calling (605) 549-5509, or by writing SD United, PO Box 3052, Rapid City, SD 57709.

We also have a membership form on our brochure, which we are beginning to distribute at locations statewide. One can request brochures by contacting SD United through any of the previously described channels.

How many members does the organization currently have?

SD United currently has 64 members from across South Dakota.

Does the organization meet on a regular basis?

The board of directors meets monthly by teleconference and 1-2 times per year face-to-face. We have a public event or training concurrent with each face-to-face meeting. SD United is beginning to plan quarterly teleconference calls open to general membership in order to update them on the progress of the organization, as well as to gain input on ways to move forward.

Who is the contact person if I want more information about the organization?

You can contact SD United via the “contact us” page on our website, call (605) 549-5509, or write to request more information, at SD United, PO Box 90, Rapid City, SD 57709.

Why would it be important for someone to become a member of this organization?

There are many reasons a person may wish to become a member of SD United. The person may want to have access to more information on mental health recovery and wellness, may see the value of empowerment that comes from having a voice and being part of community, may be seeking support from others with similar experiences, or may be an ally or supporter who knows the value of peers working together to promote a focus on recovery and wellness.

Is there anything else you would like to tell the reader about SD United?

Personally, I have seen a phenomenal transformation in myself through my involvement with SD United. I have grown exponentially since my introduction to SD United in 2009. The access to education, peer-support, and advocacy work has been instrumental in the progress I have made toward recovery and wellness.

I have grown more in the last two years than in all my previous life experience. I struggled for 30-plus years before beginning the remarkable transformation that is my recovery.

I would encourage anyone with lived experience, and anyone who considers themselves an ally or supporter of person/people with lived experience, to become a member of SD United and to get involved. Many states have organizations and peer-operated service programs that have been highly successful for many years. South Dakotans deserve to have access to the same type of education and support that is available in other states. We need a network of people with lived experience and allies to make this a reality; in turn, those advocates will gain great personal rewards from their involvement.
A Warm Alternative to Special Olympics “Polar Plunge”  
by Gail C. Eichstadt

When many people think about Special Olympics, athletic events come to mind. Special Olympics was established in 1968 for athletes with cognitive disabilities. Nationwide, athletes can participate in 22 sports. Athletes in South Dakota participate in individual, doubles, and team bowling, basketball, team volleyball, team soccer, aquatics, aquatics power lifting, individual soccer skills, race walking, track and field, and softball.

My son, Carl, participated in Special Olympics bowling and basketball and was proud when he received gold medals. Our family knew the benefit the athletes receive from Special Olympics. We observed how hundreds of volunteers make each event run smoothly and a positive event for the athletes.

When I think of Special Olympics, the “Polar Plunge” also comes to mind. Individuals in this body-numbering dip in chilly water raise funds for Special Olympics. Polar Plunges, with brave participants, will take place throughout South Dakota from January to April 2012. I admire these participants for their courage and ability to endure the cold water. I believe in supporting Special Olympics, but I have found a warmer way to do this. It is the Special Olympics USA Scarf Project, sponsored this year by Red Heart Yarn.

The Scarf Project started in 2009 at the World Winter Games in Idaho. A request for 50,000 scarves went out and crafty people from the United States and twelve countries created more than 60,000 scarves. Each Special Olympian received a white and navy blue crocheted or knitted scarf as a welcome to the games.

This year’s official colors for the 6” by 60” scarves are red and navy blue. Information about the project is located at http://scarvesforspecialolympics.org. Look for the drop-down box to locate information for the 40 states participating. The address for South Dakota is http://scarvesforspecialolympics.org/states/view/41. Specific instructions and patterns for scarves, where to purchase the yarn, and how to send the scarves to the Sioux Falls Special Olympics office are located here. By following the links, knitters and crocheters will find other helpful information.

South Dakota Special Olympics has a goal of 900 scarves by February 27, 2012. Fed Ex, United States Postal System, and United Parcel Service had delivered a total of 190 by October 26, 2011. I confess I will not be making any scarves until my golfer’s elbow, caused by knitting, improves. I do the next best thing by providing yarn to my mother, who aims to knit four scarves. If South Dakota reaches its goal, we can send the extra scarves to another state to help it reach its goal.

I am looking forward to watching the Winter Games to see the athletes participate in basketball and then proudly wear their scarves.

Completed scarves should be sent to:
Special Olympics South Dakota
Attn: Scarf Project
800 E. I-90 Lane
Sioux Falls, SD 57104

2011 Veterans Stand Down  
by Norma Vrodran

The Stand Down for homeless veterans began in 1988 in San Diego, CA. Since then, it has increased to 190 events throughout the nation each year. In 2009 alone, it was estimated that 42,000 homeless veterans nationwide received assistance at Stand Downs. The main objective of a Stand Down is to coordinate an event where all service providers come together in one location, rather than send veterans from one agency to another seeking assistance. This outreach effort has now been expanded to also include the needy and recently discharged veterans.

South Dakota Advocacy Services recently participated in two Stand Down events. Ft. Thompson held its event on August 19, 2011, hosting 15 providers and approximately 80 attendees. On September 23, 2011, Sioux Falls hosted approximately 54 providers and 225 veterans were served.

In addition to accessing service providers, veterans were able to access surplus clothing and other goods. Haircuts and flu shots were also offered at the Stand Down, as well as meals and refreshments.
High School Graduation Requirements –
What Does That Have to do With Transition?

by Tim Neyhart

In early 2009, the South Dakota Legislature passed Senate Bill 185, which amended SDCL 13-33-19 and SDCL 13-1-12.1 to eliminate the option for the basic (or standard) pathway to graduation requirements that had been in place since 2006. In their place, the new requirements began for students entering their 9th grade year starting in the 2010-2011 school year. Students who were already in high school when the new requirements were passed will continue to follow the old Standard and Advanced Pathways.

The South Dakota Department of Education (SD DOE) website, at www.doe.sd.gov/octe/gradrequirements.asp, describes some of the changes resulting from this legislation and subsequent rule changes:

1. All students will be required to have a “Personal Learning Plan.”

2. A student may be excused from certain math and science requirements if it is deemed in the student’s best interest.

3. Districts may choose to offer credit for Fine Arts extracurricular activities.

4. Effective September 1, 2013, students will be required to take one-half credit of physical education and one-half credit of health. Schools will have some flexibility in implementing the health requirement.

5. Effective September 1, 2013, students will have the option of completing a capstone experience or participating in service learning, as part of a short menu of options. This menu includes: Approved career and technical education courses; world languages; and capstone experience or service training.

6. Academic core content credit may be earned by completing an approved career and technical education course. Approval to offer credit must be obtained by the school through an application process with the SD DOE. The application has some very specific requirements, including standards-based curriculum, teacher certification, and specific assessment standards.

Administrative Rules of South Dakota (ARSD) 24:43:11:01 provides a further description of the changes. A student must earn a minimum of 22 units of credit in grades 9 through 12 to meet state credit requirements for graduation. A student may be excused from taking the required units of Algebra II, geometry, chemistry, or physics to align with a student’s Personal Learning Plan if the student’s parent or legal guardian and school counselor or administrator agree and the excuse is documented. A student may be excused from Algebra II or geometry, but not from both requirements. The student must still complete three units of mathematics and three units of laboratory science.

It is important for all students to understand these new requirements. It is of particular importance that students who are on Individual Educational Programs (IEPs) or who have accommodations under a Section 504 Plan understand how these changes could affect their ability to graduate and perhaps attend postsecondary educational institutions in South Dakota. The following will provide some specific information that will be useful to parents and students in understanding and implementing these required changes.

One of the changes is the requirement of a Personal Learning Plan for every student. As described on page 6 of the “South Dakota High School Graduation Requirements - Frequently Asked Questions,” a Personal Learning Plan identifies the specific coursework a student needs to take to reach his or her academic and career goals. It is based on the student’s skills and interests, while clearly outlining a course of study that will lead the student to earning 22 units of credit. If the language regarding Personal Learning Plans is compared to the language in the rules regarding transition planning for students with disabilities, it is clear that there are significant similarities.

For students with disabilities, ARSD 24:05:27:13.02 states: “Transition services are a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student’s needs, taking into account the student’s strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.” The requirement of a Personal Learning Plan for all students coincides well with the IEP transition plan’s concept of a coordinated set of activities designed to be within a results-oriented process. This is particularly true for students with disabilities who are focused on postsecondary education. The similarity of language describing Personal Learning Plans and IEP transition plans makes it clear that a student’s Personal Learning Plan can be easily built into the student’s transition plan, thus meeting the special education requirements and the regular education requirements in one planning process.

The Personal Learning Plan allows for the development of alternatives to described curriculum requirements. Under ARSD 24:43:11:01, students may be excused from taking certain math and science requirements if the student’s parent or legal guardian and school counselor or administrator agree and the excuse is documented. There is no guidance, however, regarding how a student request is to be considered. It is clear that the first element of the decision-making process should lie with the...
Governor Dennis Daugaard proclaimed October as National Disability Employment Awareness Month (NDEAM) in South Dakota. “Profit by Investing in Workers with Disabilities” was this year’s official theme.

To help celebrate this event, the Yankton NDEAM Committee sponsored a conference on October 4, 2011, at the SD Human Services South Training Center. The mission of the NDEAM Committee is to further the awareness and education of the Yankton community on the advantages of hiring people with disabilities and it set up the conference to meet this mission.

The morning activities started off with keynote speaker, Geri Jewell, telling her personal story of living with cerebral palsy. Geri is best known for her role as “Cousin Geri” on the NBC sitcom, “The Facts of Life.” She was the first person with a visual disability to have a regular role on a prime time TV series. Geri uses humor to facilitate attitude change. During her presentation, Geri cited several humorous personal experiences where her behavior and actions were misunderstood because of her disability. She believes you need to have a sense of humor, otherwise you cannot enjoy life. Following her presentation, Geri conducted a book signing of her newly released memoir, “I’m Walking as Straight as I Can.”

Jennifer Trenhaille, Senior Rehabilitation Counselor with Rehabilitation Services, then gave a short history of NDEAM, followed by the presentation of the outstanding employee and employer awards.

Lisa Kotalik was the winner of the 2011 Employee of the Year Award. Lisa is a Medication Aide and Resident Care Assistant at Autumn Winds, an assisted living facility in Yankton, SD. Colette Brockemeier, RN at Autumn Winds, noted in her nomination of Lisa, “She is very dependable and reliable. She is always punctual, kind, and respectful to the other residents and takes her caretaking duties seriously. Lisa has not let her learning disability stop her. She has overcome it by hard work, concentration, and a desire to do a good job.”

The winner of the 2011 Employer of the Year Award was Autumn Winds & Prairie Homes Assisted Living. Accepting the award was Carol Vandekop, co-owner. Beginning twelve years ago when Carol and her husband, Steve, purchased Prairie Homes Assisted Living Facility, they have employed people with disabilities and have continued to do so as they have acquired other facilities. They have a strong belief that all people who want to work should be given a fair chance to work. They’ve welcomed all applicants, always treated all employees with respect and dignity, and focused on individual’s strengths and abilities.

The final session of the morning featured Page Hudson demonstrating the newest technology available to accommodate many types of disabilities in the edu-

NDEAM
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Parents Lose Court Battle Over School for the Deaf
by John A. Hamilton

Several named plaintiffs (parents of children who are deaf and/or hearing impaired — hereinafter "Parents") brought a class action in federal district court against the South Dakota Board of Regents (hereinafter "Board"), and Dr. Robert "Ted" Perry (former Director for the Board) and Dr. Jack Warner (Director for the Board) in their individual capacities. The complaint alleged that closure of the South Dakota School for the Deaf (hereinafter "SDSD") and discontinuation of its programs on the school's campus violated state and federal law; it sought class certification and an order enjoining the Board from closing the SDSD and outsourcing its programs to other school districts. The federal district court ruled in favor of the Board. The Eighth Circuit Court of Appeals affirmed. **Barron et al. v. South Dakota Board of Regents, et al., 655 F.3d 787, 789 (8th Cir. 2011).**

**SDSD History**

The SDSD was established in Sioux Falls, South Dakota in 1880. The South Dakota Constitution, which was adopted in 1889, provided in Article XIV, Section 1, "The charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school." In 1944, the South Dakota Constitution was amended, moving SDSD from the Section 1 list of penal and charitable institutions to Section 3. Section 1 now reads, "The charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, a hospital for the mentally ill, a school for the developmentally disabled, and a reform school for juveniles." Article XIV, Section 3 now reads: "The state university, the agriculture college, the school of mines and technology, the normal schools, a school for the deaf, a school for the blind, and all other educational institutions that may be sustained either wholly or in part by the state shall be under the control of a board of five members appointed by the Governor and confirmed by the senate under such rule and restrictions as the legislature shall provide. The legislature may increase the number of members to nine." The referenced "board" is the Board of Regents.

The SDSD provided students across South Dakota who are deaf or hard of hearing with a residential, language-rich environment wherein the students could communicate in the same mode of communication as their peers. Court documents stated that in the 1970s, SDSD had about 130 students. The Parents described how the Board had "methodically dismantled" the SDSD "by closing the dormitory, cutting classes, refusing to admit students, and subcontracting services to further cut student population below a sustainable level." The "History" on the SDSD website excludes information on closing the dormitories, but Communication Services for the Deaf moved into the former boys' dorm in 1994, and the final dorm closing occurred in approximately 2005. As late as 2001-02, 56 students attended SDSD.

The Parents described how the Board had cut SDSD services by eliminating positions, resulting in SDSD no longer offering key courses to its students, such as American Sign Language (ASL). By 2007, the SDSD had stopped providing instruction in math and science. With certain classes eliminated, students who wanted to attend college could no longer take prerequisite courses at SDSD, forcing the students back to local school districts if they wished to receive an adequate high school diploma.

The Parents also described how the Board violated its statutory duty to admit students who cannot be adequately taught in a traditional setting due to their impairment, as is required by SDCL 13-62-6. Specifically, they alleged the Board steered eligible students away from the SDSD, failed to act on applications, and failed to serve students who met eligibility criteria.

The Parents further alleged the Board's moving the auditory-oral program off the SDSD campus spread-out resources and further reduced the student population. They argued dividing the SDSD by subcontracting the auditory-oral program was "particularly odd in light of the money recently spent to develop state-of-the-art classrooms specially designed for instruction to students with cochlear implants. These 'smart' classrooms on the SDSD campus have nevertheless been abandoned."

Governor Michael Rounds created a Task Force in 2008 to study deaf education. The Parents described how it was heavily represented by Board/SDSD members. As a result of the Board's prior actions dismantling the SDSD, they described the Governor's Task Force as having "nothing more to do than perform a eulogy over a corpse" (referring to SDSD). "At that time, the school offered two educational platforms: the bilingual-bicultural program, which focused on educating students using American Sign Language, and the auditory-oral program, which focused on educating students who use cochlear implants or other assistive hearing devices." Barron at 790.

The court noted, the "task force held four hearings and received testimony from twenty-six people, including parents, faculty, administrators, members of the deaf community, deaf education experts, and previous superintendents of the school." Id. The task force provided the governor its report in November 2008. It described 398 children in South Dakota with hearing impairments identified at the beginning of the 2008–2009 school year. Of these students, 32 attended classes at SDSD and only six of the 32 were middle/high school students. The report noted that the 32 students represented 8% of the 398 students, but 91% of the SDSD budget was allocated to SDSD’s activities in Sioux Falls. The Task Force recommended SDSD change its mission to focus on outreach programs and services. Id.

**Barron v. S.D. Board of Regents**

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The conclusion from these statistics is that many of South Dakota’s students who are deaf or hard of hearing are isolated throughout the State with no similarly-communicating peer group and no interpreter services. These statistics significantly put into question whether these students are receiving an appropriate education.

**Barron v. Board of Regents**

"The complaint alleged four causes of action. Counts one and two alleged that the defendants’ decision to discontinue offering programs at the school’s campus and to move those programs to other school districts violated South Dakota law and the Individuals with Disabilities Education Act (IDEA). Count three pled a declaratory judgment action, claiming that the parents’ due process rights were violated because the ‘decision to terminate services at SDSD and out-source such services to Brandon Valley constitutes a change to the IEP’s for the affected students.’ Count four alleged a civil-rights action under 42 U.S.C. § 1983, claiming that the defendants had violated the IDEA and the parents’ right to due process." *Barron* at 791.

The Parents sought a preliminary injunction, seeking to stop the Board from refusing to admit eligible students to the school, discontinuing the services offered at the school’s campus, outsourcing its services to Brandon Valley School District, and pursuing an outreach-based agenda. The Parents submitted six affidavits supporting their motion. The Board opposed the motion and filed a motion to dismiss the complaint. *Id.*

"The district court held a status conference, during which it inquired whether the plaintiffs were required to exhaust their administrative remedies and advised that it would resolve the exhaustion issue before further case scheduling occurred. Thereafter, the parents filed their opposition to the motion to dismiss, along with affidavits supporting both their opposition and their motion for a preliminary injunction. Following numerous other filings, the district court converted the motion to dismiss into a motion for summary judgment and granted judgment in favor of the defendants." *Id.*

On appeal to the Eighth Circuit Court of Appeals, the Parents first argued the district court erred in converting the Board’s motion to dismiss to a motion for summary judgment. The Eighth Circuit determined the district court acted within the federal rules in doing so. *Id.* at 792.

The Parents further argued the Board’s decision to discontinue to offer educational services at the SDSD campus and instead provide only outreach services violated IDEA. In order to reach the merits of the Parents’ claim, the court first had to determine whether the Parents were required to exhaust their administrative remedies. Ordinarily, IDEA requires parents to exhaust administrative remedies (through a due process hearing) before they may bring an action in court. Here, the Parents brought their case directly into court, alleging that meaningful administrative review does not exist because the SDSD functions independent of the South Dakota Department of Education.

For years, the SDSD administration and Board had taken the position that families cannot assert an IDEA claim directly against SDSD. Per 34 C.F.R. §300.511(b), IDEA requires the due process procedures to be conducted by the public agency.
directly responsible for educating the child, which arguably should mean the Board. The SDSD’s comprehensive plan directed that if parents disagreed with IEP content, “procedures outlined in the procedural safeguard section of this document shall be followed.” The procedural safeguards section, however, was left blank in SDSD’s comprehensive plan. When parents inquired as to filing for a due process hearing, the SDSD/Board directed them to bring the hearing against their local school district (which probably has no expertise in deaf education). The problem with that avenue was that even if parents prevailed in a hearing against their local school district, the local district had no authority to require the SDSD to correct the situation. Parents of children attending SDSD had no effective avenue to challenge inappropriate services. The Eighth Circuit agreed with the district court that exhausting administrative remedies would have been futile because adequate relief could not be obtained through the administrative process. Id. at 793.

The Parents argued that closing the SDSD deprived students of education in the least restrictive environment (LRE). They made five arguments: First, South Dakota’s 400 deaf and hard-of-hearing students “are entitled by law to a language rich learning environment that consists of peers who communicate in the same way.” Second, the U.S. Department of Education had issued policy guidance in October 1992 stating that the LRE for a student who is deaf is not the regular classroom. Third, IDEA requires a continuum of placements be available, including special schools. Fourth, South Dakota law entitles students who are deaf and hard-of-hearing to a setting with “a sufficient number of language mode peers” (citing SDCL 13-33B-1(4) and SDCL 13-33B-3), including opportunities at SDSD. Fifth, SDSD had previously been found out of compliance for failure to provide ESY services in a language rich environment when SDSD directed all students to receive ESY from the local school districts, as SDSD was the LRE for some students.

The Eighth Circuit ignored the federal policy, federal regulations, and State statutes. Instead, the court referenced IDEA’s general LRE mandate to ensure that children with disabilities be educated with children who are not disabled to the maximum extent appropriate, noting IDEA makes no exception for students who are deaf. The court further stated that the parents did not allege their children were not benefiting educationally in the schools where they are currently enrolled, and while a standalone school may provide the best education for children who are deaf, IDEA does not require States to provide the best education to children with disabilities. Id. at 794.

The court ruled the Parents’ §1983 claim for liability against Perry and Warner “failed to establish a violation of the IDEA, however, and have failed to point us to any facts supporting their claim that their constitutional rights were violated.” Id.

The Parents also alleged the Board’s decision to move the auditory-oral program to the Brandon Valley School District violated their due process rights. The named Parents in this lawsuit had students enrolled, or seeking to be enrolled, in the bilingual-bicultural program. The Eighth Circuit determined the Parents did not have standing to allege the due process violation, as none of the named plaintiffs had children enrolled in the auditory-oral program during the 2008-09 school year and none had children who were supposed to be in the program in 2009-10. Therefore, none of the named plaintiffs alleged an “injury in fact” to provide standing to bring the claim. Id. at 794-95.

Finally, the Parents argued South Dakota’s Constitution, statutes, and common law require the Board to provide an educational program at the SDSD campus. The Eighth Circuit noted that the S.D. Constitution places the school for the deaf “under the control” of the Board. Id. at 795. The court then looked to S.D. statutes to determine the extent of the Board’s “control.” SDCL 13-49-13 gives the Board the power to “govern and regulate each institution under its control in such manner as it deems best calculated to promote the purpose for which the institution is maintained.” SDCL 13-62-1 provides that “State School for the Deaf, located at Sioux Falls, in Minnehaha County, shall be under the control of the Board of Regents and so maintained and managed as to afford an appropriate education to those entitled to its benefits.” SDCL 13-62-6 sets out eligibility criteria: “All persons under twenty-one years of age, whose hearing impairment precludes successful educational benefits of public schools, who are residents of the state, and capable of receiving instruction are eligible for programs provided by the state school for the deaf.” The court concluded that these statutes “do not preclude the Board from providing an appropriate education to eligible students on an outreach basis or through its service agreements with other school districts.” Id. at 796. It further stated SDCL 13-33B-3 requires the school to be considered when determining the placement of a deaf or hard of hearing student, but “does not mandate that educational programs be offered at the school’s campus.” Id. The court concluded, “It was within the Board’s power to discontinue offering educational programs at the school’s campus, in favor of contracting with other school districts to offer those programs and maintaining funds in its budget for students to attend residential programs.” Id.

From the Editor:

Two of the court’s rulings are particularly troublesome. The first involves its conclusion that LRE for a student who is deaf must be looked at the same way it is for any other child with a disability (stating IDEA’s preference for integration in the regular classroom “makes no exception for deaf students”). That ruling lacks proper analysis. The federal Department of Education issued a policy letter on education of students who are deaf on October 26, 1992. 19 IDELR 463A. The Policy Letter first discussed the unique educational challenges such students face:

The disability of deafness often results in significant and unique educational needs for the individual child. The major barriers to learning associated with deafness relate to language and communication, which in turn, profoundly affect most aspects of the educational process. For example, acquiring basic English language skills is a tremendous challenge for most students who are deaf. ... The reading skills of deaf children reflect perhaps the most momentous and dismal effects of the disability and of the education systems’s [sic] struggle to effectively teach deaf children: hearing impaired students "level off" in their reading comprehension achievement at about the third grade level.

Compounding the manifest educational considerations, the communication nature of the disability is inherently isolating,
with considerable effect on the interaction with peers and teachers that make up the educational process. This interaction, for the purpose of transmitting knowledge and developing the child's self-esteem and identity, is dependent upon direct communication. Yet, communication is the area most hampered between a deaf child and his or her hearing peers and teachers. Even the availability of interpreter services . . . may not address deaf children's needs for direct and meaningful communication with peers and teachers.

The Policy Letter then provided guidance on what constitutes an appropriate education in the LRE for a child who is deaf:

Meeting the unique communication and related needs of a student who is deaf is a fundamental part of providing a free appropriate public education (FAPE) to the child. Any setting, including a regular classroom, that prevents a child who is deaf from receiving an appropriate education that meets his or her needs, including communication needs, is not the LRE for that individual child.

* * *

The Secretary is concerned that some public agencies have misapplied the LRE provision by assuming that placements in or closer to the regular classroom are required for children who are deaf, without taking into consideration the range of communication and related needs that must be addressed in order to provide appropriate services. . . . The decision as to what placement will provide FAPE for an individual deaf child . . . which includes a determination as to the LRE in which appropriate services can be made available to the child . . . must be made only after a full and complete IEP has been developed that addresses the full range of the child's needs.

* * *

[The Secretary emphasizes that placement decisions must not be based on category of disability, the configuration of the delivery system, the availability of educational or related services, availability of space, or administrative convenience.]

* * *

The Secretary recognizes that regular educational settings are appropriate and adaptable to meet the unique needs of particular children who are deaf. For others, a center or special school may be the least restrictive environment in which the child's unique needs can be met. A full range of alternative placements as described at 34 CFR 300.551(a) and (b)(1) of the IDEA regulations must be available to the extent necessary to implement each child's IEP.

Courts are to give such policy letters great deference; the Eighth Circuit ignored it. South Dakota's legislature included the guidance from this policy letter in SDCL 13-33B-1. Furthermore, at each IEP Team meeting, the IEP Team must consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.” 34 C.F.R. §324(a)(2)(iv).

For many South Dakota students, the LRE where these needs can be appropriately met was SDSDD. Closing the SDSDD effectively eliminated a day-program (and previously a residential program) at a special school from the continuum of placements available in South Dakota. As a result, South Dakota can only meet its mandate to offer a full continuum of placements through out-of-state placements for children who are deaf. Children who are deaf are isolated because of their disability— their inability to communicate with the hearing and speaking population. As described above, South Dakota has numerous children who are deaf who are further isolated by distance from age-appropriate, similarly communicating peers, and from interpreters who could help bridge that gap during school hours. The court’s determination that closing the SDSDD does not violate IDEA’s LRE and FAPE provisions is disconcerting, given its ignoring the special factors that must be taken into account for determining an appropriate education in the LRE for a student who is deaf.

The court’s ruling that the S.D. Constitution and statutes allowed the Board to eliminate the school on the SDSDD campus is also troublesome. Article XIV, Section 3 of the S.D. Constitution reads: “The state university, the agriculture college, the school of mines and technology, the normal schools, a school for the deaf, a school for the blind, and all other educational institutions that may be sustained either wholly or in part by the state shall be under the control of a board of five members appointed by the Governor . . .” The reference to “a school for the deaf” seemingly indicates that an actual school must exist. If this language allows the Board to eliminate the SDSDD as an actual school, does it also allow elimination of USD and SDSU campuses?

The court’s statutory interpretation is likewise questionable. SDCL 13-62-1 provides, “The State School for the Deaf, located at Sioux Falls, in Minnehaha County, shall be under the control of the Board of Regents and so maintained and managed as to afford an appropriate education to those persons entitled to its benefits.” The Parents pointed out the S.D. Legislature used the same language to reference USD, SDSU, state colleges, and the School for the Blind. SDCL 13-62-2 requires the Board to hire a school superintendent. SDCL 13-62-4 charges the superintendent with employing faculty “at the school.” SDCL 13-62-5 provides for the preservation of the school buildings and properties “belonging to the school.” SDCL 13-62-6 describes the student body “entitled to admission” (those precluded from successful educational benefits in public school, including non-residents “upon payment of board, tuition and care charges established by the Board of Regents.” SDCL 13-62-11 addresses transportation to SDSDD. SDCL 13-62-12 requires the Regents to apply all funds and property received “to the benefit of the school.” SDCL 13-62-13 requires the Board to “fix the period of the academic year of such school.” Finally, SDCL 13-62-14 requires the Board to make rules for “the efficient government and operation of the school.”

State statutes covering deaf educational programs in Ch. 13-33B also recognize SDSDD as a placement option. SDCL 13-33B-3, “Placement of deaf and hard-of-hearing children,” states: “In considering placement and the least restrictive environment for a deaf and hard-of-hearing child, the individualized education program team shall consider the unique communications needs of the child as discussed in § 13-33B-2. In making that determination, the individualized education program team shall consider particularly those program options that provide the pupil with an appropriate and equal opportunity for communication access.
Social Security Beneficiaries Receive a 3.6% Increase in Their Benefits!

by Brian G. Gosch

Starting January 2012, all Social Security beneficiaries will get a 3.6% increase in their cash benefits. As expenses go up for costs of daily living, it is very important for Social Security beneficiaries get an increase in cash benefits. The 3.6% increase in benefits includes all disability beneficiaries, Supplemental Security Income (SSI) recipients, retirement beneficiaries, survivor beneficiaries, and auxiliary beneficiaries.

There are two main types of Social Security benefits: Title II, which includes Old-Age, Survivors, and Disability Insurance (OASDI) (eligibility and payments are based on amount and years of paying into the system via payroll taxes); and Title XVI, which is SSI (a means tested program based on limited income and resources). Title II recipients are eligible for Medicare after a 24-month waiting period. Title XVI benefits authorize immediate Medicare eligibility.

SSI recipients realize the 3.6% increase with NO increases in associated costs. That means the federal benefit rate, i.e., the maximum benefit rate payable in 2012, will go up by $24 per month or $288 per year; monthly, the maximum goes from $674 to $698. There are NO increases in the cost share amounts (co-pays) for Medicaid recipients for 2012! The co-pay for brand name prescriptions remains $3.00 and $0.00 for generic brands. The co-pay for inpatient hospital services remains $50 per admission and 5% of the allowable reimbursement (up to $50) for outpatient services. An eligible SSI couple’s benefit will go up by $37 per month or $444 per year. A couple’s monthly benefit will go from $1,011 to $1,048. The resource limits for SSI recipients remain the same - $2,000 of nonexempt resources for individuals and $3,000 of nonexempt resources for couples.

The “break even” point for earned income for 2012 (the point at which earnings of SSI recipients make them ineligible for at least $1 of SSI) goes up to $1,481 (assuming no unearned income and applying the earned and unearned income exclusions). The threshold amount of earnings - the measure used to decide whether earnings are high enough to replace the SSI and Medicaid benefits will go up from $32,991 to $34,014 for 2012 in South Dakota. The SSI Student Earned Income Exclusion (SEIE) goes up from $1,640 to $1,700 per month with the annual cap going up from $6,600 to $6,840. The SEIE allows students under age 22 and regularly attending school to exclude earnings from countable income for determining the SSI benefit amount.

Benefits for all Title II Social Security retirees, survivors, auxiliary beneficiaries, and disability beneficiaries will also go up by 3.6%. According to the Social Security Administration’s “Fact Sheet,” on average benefits will go up as follows:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Retired Workers</td>
<td>$1,195</td>
<td>$1,229</td>
</tr>
<tr>
<td>Aged Couple, Receiving Benefits</td>
<td>$1,925</td>
<td>$1,994</td>
</tr>
<tr>
<td>Widowed Mother &amp; 2 Children</td>
<td>$2,455</td>
<td>$2,543</td>
</tr>
<tr>
<td>Aged Widow(er) Alone</td>
<td>$1,143</td>
<td>$1,184</td>
</tr>
<tr>
<td>Disabled Worker, Spouse and One or More Children</td>
<td>$1,826</td>
<td>$1,892</td>
</tr>
<tr>
<td>All Disabled Workers</td>
<td>$1,072</td>
<td>$1,111</td>
</tr>
</tbody>
</table>

Title II beneficiaries who opt for Medicare Part B coverage must pay a premium. That premium went up less than expected and actually went down for some beneficiaries. The Medicare Part B premium for 2011 was $96.40 per month for most enrollees. It went up to $99.10 for 2012, an increase of only $3.50. For those enrolling in 2011, during a year with a premium freeze, who had to pay a higher premium --- $115.40, good news arrived as they learned their premium will actually go down by $13.50 per month or $162.00 for the year, making their premium $99.90 per month. For the average SSDI beneficiary, who gets an increase of $39 per month in cash benefits or $468 per year, having to pay $3.50 more per month in Medicare Part B premiums will be manageable. In addition, many low income beneficiaries do not pay a Medicare Part B premium at all since there are programs out there that cover that cost. Under the Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB) and the Qualified Individual (QI) programs, all or part of the Medicare Part B premium is covered. If one is eligible for the QMB, SLMB, or QI programs, the state will pay the full or partial premium amount.

Seniors enrolled in Medicare Part B who do not need hospital care in 2012 will experience a $22 DECREASE in the annual Part B deductible, which will be $140 in 2012.

Social Security Benefit Increases
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including the state school for the deaf which may be the least restrictive environment for a deaf or hard-of-hearing child.”

Given the specific repeated references to the School for the Deaf, including its specific location, admission requirements, academic year, listing as a placement option, and provisions for non-resident board, tuition, and care, it is difficult to discern how the Eighth Circuit leapt to the conclusion that the SD Constitu-
Access to Medical Services
by Robert J. Kean

Access to medical services serves as a significant basis of an individual’s personal wellbeing and quality of life. Often, it will also be the determining factor of individuals’ ability to reside in their community of choice. The phrase, “access to medical services,” usually begins with thoughts of the fiscal aspects of receiving medical services:

♦ Are there sufficient resources?
♦ Are eligibility criteria met if a benefit program is involved?

Or, maybe one initially thinks about the logistical aspects:

♦ Are the services available in the community?
♦ Is there transportation?

However, another aspect of “access to medical services” is just as critical to receiving adequate healthcare, but is often overlooked, not only by the person planning to seek medical care, but by the medical professionals themselves. To receive adequate care, a person must have appropriate physical access – access to the medical office, the instruments used to provide medical services, and the ability to communicate with medical staff. Any of these presents unique challenges and barriers to medical services for persons with disabilities. Reports, studies, and commentary on the projected increasing number of persons with disabilities and the aging of the baby boomers requires attention be given to this aspect of adequate access to medical services.

Historically, persons with disabilities as a group have a great deal of direct contact with all aspects of the medical services community. The concept of disability itself and methods used to describe and address the challenges of a disability, from diagnosis to successful treatment, is based on medical models. While receiving the benefits of medical services, the disability community is a major contributor to the research, science advancement, and economic outcome of those providing medical services.

Because of this long-term and well-established connection, one would expect that the medical community has led and continues to lead in the adaptation of its offices, services, and instruments to the multiple physical access needs of persons with disabilities. One would think the needed adaptations would arise naturally out of the interaction of medical provider and patient. One would assume an interest by the medical provider in seeing that the full range of optimum services are provided and the desire to engage the patient in meaningful treatment decisions. One would also think that adequate physical and communication access issues would have been resolved from the enormous amount of attention generated by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). These federal laws clearly set out specific rights and responsibilities regarding physical access to medical services.

As stated above, the link between access to services and the resulting wellbeing of persons with disabilities is a fundamental fact. It is often a recurring theme and focus of well-publicized national efforts, including those of the professional medical organizations and federal agencies. Prominent federal efforts have included that of the U.S. Surgeon General office, which issued a well-documented “Call to Action to Improve the Health and Wellness of Persons with Disabilities” in 2005 and updated it in 2007. One of the four goals of the Call specifically listed “access to health care and support services” and “promoting independence.” The goals’ narrative further encouraged healthcare providers to “see and treat the whole person, not just the disability.”

That physically accessing medical services remains an important topic within the federal government is best demonstrated by the “Healthy People 2010” initiative. It has been extended, renamed “Healthy People 2020,” and expanded in scope. Information on this effort is located at HealthyPeople.gov. Within the 2020 Topics and objectives section is a disability and health discussion. Two of the highlighted areas for needed improvement and opportunity for persons with disabilities are: Be included in public health activities; and Receive well-timed interventions and services. It noted that without these opportunities and improvements, persons with disabilities will continue to experience health disparities compared to the general population. Some of the listed disparities included:

♦ Experience difficulties or delays in getting the health care they need;
♦ Not have had an annual dental visit;
♦ Not have had a mammogram in past 2 years;
♦ Not engage in fitness activities; and
♦ Receive less social-emotional support.

With the wealth of information available on the benefits of regularly accessing medical services, it is therefore interesting and more-so troubling that physical access to medical services remains a continuing challenge for many persons with disabilities in order to get basic health care needs addressed. This fact was the subject of a recent publication, “Ill Prepared, Health Care’s Barriers for People with Disabilities,” from the Equal Rights Center, which indicated that there is much yet needed to be done before persons with disabilities can claim to have full access to the full range of medical services.

The Equal Rights Center (“ERC,” www.equalrightsceneter.org) is a national non-profit civil rights organization based in Washington, D.C. It promotes equal opportunity in the community, including access to public accommodations. In the course of its work, ERC has developed an expertise in civil rights testing that has been recognized by local and national organizations and agencies and the courts. The ERC report, referencing previous work done by the National Council on Disability, points out a number of barriers that persons with disabilities experience when accessing medical services, including:

♦ Stereotypes about disability by healthcare providers;
♦ Health care provider misinformation, and lack of appropriately trained staff;
♦ Limited health care facility accessibility; lack of examination equipment that is usable by persons with varying disabilities;

Access to Medical Services
(Continued on page 13)
Access to Medical Services

(Continued from page 12)

- Lack of sign language interpreters;
- Lack of materials in formats that are accessible to people who are blind or have low vision; and
- Lack of individualized accommodations.

While each of the barriers mentioned is critical to adequate health care, the barrier of limited health care facility accessibility and lack of accessible examination equipment presents a pivotal challenge. If one cannot get into the office and use the equipment, how effective are the medical services? As importantly, what are the consequences?

In response to this question, the U.S. Department of Justice issued a bulletin in its series of publications dealing with application of the ADA that specifically addressed issues involving physical accessibility to medical services. Entitled, “Access to Medical Care for Individuals with Mobility Disabilities” (available at www.ada.gov), the detailed bulletin provides an overview of the ADA and its general requirements, a question and answer section of typical inquiries, and a discussion on accessible examination rooms and medical equipment.

In pointing out the importance of accessibility of doctors' offices, clinics, and other health care providers, the bulletin states that Titles II and III of the ADA and Section 504 require that medical care providers provide individuals with disabilities:

- full and equal access to their health care services and facilities; and
- reasonable modifications to policies, practices, and procedures when necessary to make health care services fully available to individuals with disabilities, unless the modification would fundamentally alter the nature of the services (i.e., alter the essential nature of the services).

The bulletin also points out that the general construction and alterations requirements of the ADA are applicable to health care facilities. It further points out that all buildings, including those built before the ADA went into effect, are subject to accessibility requirements for existing facilities. Under Title III, existing facilities are required to remove architectural barriers where such removal is readily achievable. The bulletin goes on to explain that barrier removal is "readily achievable" when it is easily accomplishable and is able to be carried out without much difficulty or expense. Even if not "readily achievable," the entity must make its services available through alternative methods. Under Title II and Section 504, a public entity must ensure that its program as a whole is accessible; this may entail removing architectural barriers or adopting alternative measures, such as relocating activities to accessible locations.

It is important to reiterate that even when an alteration is not readily achievable, the service must be provided through alternative methods. This does not mean that the provider can say that the services cannot be provided because the provider does not have accessible medical equipment or does not have sufficiently trained staff; simply refusing to provide the services or provide the services in a manner where the full benefit of the services is not achieved is not acceptable. For example, often persons using wheelchairs are regularly examined in their wheelchairs due to their inability to get onto the examination table independently.

This not appropriate since examining a patient in their wheelchair is usually less thorough than on an examination table and does not provide the patient equal medical services. In most instances, removing the barrier is as simple as using an adjustable table.

It is important to have these guidelines in mind when visiting medical offices. The ERC report indicates that a significant number of medical offices have practices or physical issues that remain out of basic compliance with the ADA and Section 504. This is evidenced by a cursory Google search of medical services topics that shows interesting headlines such as, “Are You Violating ADA Requirements?” with accompanying articles pointing out the ramifications of being out of compliance with Title III.

Everyone can assist in addressing this issue. When visiting a medical office, especially when the examination area, be observant and share your observations if you discover features that would prohibit a person with a mobility impairment from having equal access. Look for the following accessible features or lack thereof:

- an accessible route to and through the room;
- an entry door with adequate clearing width, maneuvering clearance, and accessible hardware;
- appropriate models and placement of accessible examination equipment; and
- adequate clear floor space inside the room for side transfer and use of lift equipment.

Sharing your thoughts on noted physical access issues in a constructive manner and complementing medical office staff when you see well-designed medical offices will greatly assist persons who are in critical need of vital medical services.

Social Security Benefit Increases

(Continued from page 11)

who end up in the hospital for inpatient care (Medicare Part A) will face a slightly higher deductible, however — $1,156 in 2012, an increase of $24 from $1,132 this year. There is good news for seniors in Medicare Advantage (Part C), the largely private plans that cover care through network providers and often include prescription drug benefits, as they will pay premiums on average that are 4 percent lower in 2012. Preimums for stand-alone Medicare Part D drug plans are remaining flat for the most part. Overall, Title II beneficiaries will be getting a 3.6% increase in benefits with little increase in associated costs.

SSDI beneficiaries would be interested in other changes in light of the cost-of-living adjustment. For example, the substantial gainful activity amount is going up from $1,000 to $1,010 for the non-blind and from $1,640 to $1,690 for the blind. However, the trial work period amount is remaining the same at $720.

The payroll taxes remain the same (6.2% for OASDI and 1.45% for HI, totaling 7.65%) although the 2% reduction that applied to workers and self-employed people on wages and salaries for 2011 will not be in effect in 2012. Other changes in amounts, limits, and thresholds are: 1) maximum taxable earnings for OASDI goes up from $106,800 to $110,000 (Medicare stays unlimited on taxable earnings); 2) earnings per quarter for eligibility goes up from $1,120 to $1,130; and 3) the maximum amount of earnings one can make while receiving retirement benefits before the full retirement age goes up from $14,160 to $14,640. Earnings over that amount will cause a $1 reduction in Social Security benefits for every $2 of earnings.
No Criminal Charges Against Henry's Turkey Service

by Christina Agile

Recently it was announced that there will be no criminal charges filed against Henry's Turkey Service in relation to the mistreatment and underpayment of several employees with disabilities. Henry's Turkey Service is a Texas-based company that has employed dozens of people with disabilities over the last 34 years. The company joined with Hill Country Farms in 1972 to create Hill Country Farms, Inc., db/a Henry's Turkey Service ("HCFHTS"). There were many questions raised over the last few decades about the welfare of the men working at the "plant" and staying at HCFHTS' "bunkhouse," located in Atalissa, Iowa, but apparently none were taken seriously enough to warrant an investigation.

The 100-year-old bunkhouse is a renovated schoolhouse that was rented by HCFHTS from the city of Atalissa for $600.00 a month. It has served as housing for the workers of HCFHTS. The building went without heat, and relying only on space heaters for the last several years of its use. The bunkhouse was closed in February 2009 by Iowa State Fire Marshalls after receiving a call about the living conditions. Many Iowa officials arrived at the bunkhouse and found boarded up exits, plywood covering windows (in some areas the only thing between the employees and the cold weather), and roaches everywhere. In several reports, the bunkhouse was described as "rancid" and an "eye-opener."

The employees of the plant were removed; 31 people ranging in age from 39 to 71 years old were relocated into a hotel until a more permanent residence could be found. Several of the employees had been sent to Iowa (from Texas) to work at the plant and had no relatives near them. Some of the men had worked for HCFHTS for decades and had become accustomed to daily belittling and name-calling. The workplace bullying included supervisors referring to the men with disabilities as "retarded," "dumb," and "stupid." Several people reported acts of physical abuse, including hitting, kicking, and even handcuffing. There were several statements saying that as punishment, employees were forced to carry heavy weights. Many men were denied health care treatment after reporting they had been injured and were often denied bathroom breaks.

The U.S. Equal Employment Opportunity Commission (EEOC) filed a federal lawsuit against HCFHTS for failing to fairly compensate the men and for forcing them to work in such poor conditions. Regardless of how many hours the employees worked, HCFHTS always paid them $65 a month for their work. Conveniently, this was the exact amount they could be paid in wages before their Social Security benefits would decrease. The company had also become the employees' payee for their Social Security Benefits. HCFHTS would deduct a cost for room and board from the employees' checks, leaving them with nothing. The EEOC stated that the company had acted with "malice" and "reckless indifference" in committing numerous major violations of the Americans with Disabilities Act. The EEOC alleged that the mistreatment of the workers had resulted in substantial economic benefits to the company. In its lawsuit, the EEOC requested that the men be compensated for the back pay they are entitled, the expenses incurred due to relocation, and medical treatment.

In Solis v. Hill Country Farms, Inc., --- F. Supp.2d ---, 2011 WL 2134979 (S.D. Iowa, April 21, 2011), the Secretary of Labor brought an action against HCFHTS due to its egregious actions against its former workers. HCFHTS claimed it had paid the workers proper wages, as it had used a formula equating the amount of turkeys processed per man. The court determined that HCFHTS failed to show that it had acted in good faith and had reasonable grounds for believing that its wage formula was proper. HCFHTS' only defense against the EEOC's claims was that the men who worked in the Atalissa plant should not be considered its "employees." The court held that although HCFHTS claimed the workers at Henry's Turkey Service were not its employees, HCFHTS was, in fact, their employer, and that HCFHTS willfully violated the Fair Labor Standards Act of 1938 (29 U.S.C.A. §201). The court ruled that HCFHTS was responsible for damages, and that in calculating the back wages owed, HCFHTS was not entitled to a credit for the cost of providing workers room and board.

The National Disability Rights Network (NDRN) released a statement finding a total failure in the disability service system to provide quality work for people with disabilities. NDRN explained that it believes there has been a major breakdown between policy and implementation of the aforementioned system. In its report, NDRN mentioned the terrible situation the workers of HCFHTS faced and called for an end to sheltered workshops. The report is available to the public online at www.ndrn.org and is entitled, "Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work."

Although it is clear that HCFHTS intentionally mistreated, abused, and underpaid its employees, the Iowa Attorney General, Tom Miller, announced in late September 2011, that his office will not pursue any criminal charges against HCFHTS for its actions. A statement released to the Des Moines Register by Miller's office said, "The civil and administrative penalties that other agencies have secured against the Texas labor broker will hold the company accountable and deter others from exploiting disabled workers." It has been noted that Miller did not deny that HCFHTS is suspected to have committed criminal offenses, only that it had already been held "accountable" by having a judgment of monetary damages rendered.

It is disturbing to know that these men were grossly mistreated and abused, and then find that there will be no criminal charges filed. There have been fines of over a million dollars levied against HCFHTS by the courts for back pay, improper deductions from paychecks, and damages. It is hoped that these fines will be a deterrent to other businesses considering this type of forced work environment, but are they big enough?
expressed interests and desires of student and/or the identification of the student’s specific coursework to reach his or her academic and career goals based on the student’s skills and interests.

As with all elements of plan development, the need for individualization is very important, if not the most important part of the plan. Students receiving special education often struggle in math and science courses. This struggle can be the result of having a specific learning disability in the area of math or reading, the lack of appropriate accommodations, and/or the lack of effective instruction in elementary grades. These issues and others can lead to a lack of foundation in math and science, which impacts the student’s ability to be successful in these classes in high school. It is important that assessment and planning be done in an attempt to identify what issues a student presents in completing the graduation requirements in this area of the curriculum. Parents should be fully informed regarding these requirements and any issues their children have in meeting them.

It also important for the school to recognize the possibility that accommodations could be provided that would make it possible for a student to complete these course requirements. Accommodations can and should be made, and can more effectively be made, by planning in advance for the needs of a student so that he/she may have a more equal chance to participate and succeed in completing the required courses.

"Accommodations" is not clearly defined in the law. One definition that exists can be found in Guidance Policy: Applying Graduation Requirements to Students with Disabilities, which is a May 20, 2010, technical assistance guide developed by the South Dakota Department of Education. It states, “Accommodations: The actual teaching supports and services that the student may require to successfully demonstrate learning. Accommodations should not change expectations to the curriculum grade levels.” As part of the planning process for students’ participation in the required course areas, consideration of accommodations should take place prior to acting on a request that a student be excused from these courses. This will provide the student with the increased opportunity to complete the regular high school diploma course work and to graduate with his or her peers.

In addition to possible accommodations, ARSD 24:05:27:12 allows the IEP team to modify specific units of credits toward the graduation requirements. Amendments may include modifications and/or substitutions made to accommodate the needs of the individual student; the nature and extent of any amendments must be documented in the IEP.

While the SD DOE does not define “modifications and/or substitutions,” the graduation technical assistance guide provides good information for IEP Teams to consider when discussing these terms:

- Documentation of any amendments should be cumulative in nature so that the IEP team is able to accurately discuss the student’s progress toward earning a diploma.
- Amendment of graduation requirements through course substitutions should be made in similar content areas whenever possible in order to provide the student a well-rounded education. For example, the team may choose to substitute a Basic Math class for Algebra I. This would be more educationally sound than substituting Ceramics for Algebra I. As always, the team, including the parents, will make the final determination regarding any amendment of graduation requirements.

When making amendments, the team should consider unintended consequences for the student’s post-school activities. Substituting functional courses for math requirements, for example, may require the student to take remedial math courses in higher education (at regular tuition prices, with no credit earned). In addition, exempting a student from world language classes may negatively affect college admission.

When amending graduation requirements, the IEP Team should consider the effect on the student’s progress toward achieving his/her measurable post-secondary goals.

This background information brings us to the question of how the graduation requirements relate to transition. Many significant elements go into the development of both the required Personal Learning Plan and the transition component of the IEP. Since all students are required to have a Personal Learning Plan, for students with disabilities a part of that plan...
Twenty Years and Going Strong
Year 20 Began in November
by Sandy Stocklin Hook

Twenty-seven individuals began their Partner journey in November with their first session of Year 20 of South Dakota Partners in Policymaking. The Class of 2012 consists of thirteen parents, nine self-advocates, three Partner assistants, and two family members. The fifteen females and twelve males comprising the class represent thirteen counties throughout South Dakota. Class participants are Brent Adams, Mike Foster, Andrew Kremen, and Fred Ray of Huron; Elmer Athey, Big Stone City; Elmer Athey, Milbank; Richard Bartling, Burke; Kristin Brandt, Revillo; D’Este Chyler, Lake Andes; JoAnne Cleveland, Rhonda Erickson, and Adam “Pal” Merchant from Spearfish; Carolyn Deal and Darcie Propst, Pierre; Joe Dvorak, Christopher Faundeen, Josh Nankivel, Anne Sullivan, and Jennifer Wilbes-Brown from Sioux Falls; Joleen Garneaux and Shannon Luke of Highmore; Chuck Henrie and Jennifer Scott, Rapid City; Jenny Jacobson, Salem; Caryn Johnson, Aberdeen; Stacy Lambrecht, Brandon; and Linda Muise, Vale.

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

Class participants attend six two-day training sessions from November through April. At each session, experts in disability and advocacy fields present information and interact with the class. Partners have the opportunity to work on communication skills, assertiveness, decision-making skills, legislative testimonial presentation skills, group activities, and team building. Each participant must complete homework assignments every month.

A selection committee is comprised of graduates of the training. The committee uses criteria including representation from varying ethnic and cultural backgrounds, different geographic regions of South Dakota, and a mix of parents and self-advocates. Partners graduates Cary Gronemeyer, Sioux Falls (Year 12), Lori Douville, Chamberlain (Year 7), and Angela Goebel, Gettysburg (Year 19) served on this year’s selection committee. Assisting was Tim Neyhart of SDAS and Arlene Poncelet of the DD Council.

Session One was held at the Governors Inn in Pierre on November 18-19, 2011. Robert Kean and Tim Neyhart of SD Advocacy Services welcomed the class to Partners and spoke about the DD Network. Kean is the Executive Director for SDAS and Neyhart is the PADD Program Director.

Kathie Snow of Colorado challenged the class to think “different.” Snow impressed the importance of the use of People First Language. “Put the person first because a disability is only a body part that works differently,” said Snow. “Labels are used for services and for nothing else. People First Language will help change attitudinal barriers that face people with disabilities on a daily basis.” She told the class, “You have a responsibility as a Partner to network together and to change the status quo. Partners will have a positive impact on your life, so be open-minded and ready to accept and generate change.”

David Hancox of Minnesota talked about the history of disabilities and “where we were 50 years ago, to where we are at today, and where we want to be tomorrow.” Hancox said, “Building supports in local communities is the first step in achieving inclusion and it is everyone’s responsibility.” He provided a historical perspective of the landmark decisions that affect individuals with disabilities. Hancox told the class, “While the past has fostered discrimination and segregation against people with disabilities, despite some improvements discrimination and segregation still exist and it is the job of Partners to change this.”

Five graduates of Partners shared how Partners changed their lives. Cheryl Faundeen (Yr 13) described how Partners changed not only herself, but also her family. “Everyone in our family knows the importance of People First Language and of having support in making deci-
Partners in Policymaking
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sions.” Year 3 graduate, Charlotte Athey, explained that Partners prompted her to start a support group and to serve on committees, councils, and boards. “Don’t be afraid - go out there and get on boards, that is how you can make a difference,” said Athey.

Juanita Harrington, Year 19, of Piedmont remarked how Partners gave her the courage to run for school board and now that she got elected, will “rely on her training to help her think on her feet, be fair, pick her battles, and run a meeting.” She also stressed that it is important to learn to advocate for yourself. Luther Johnson of Mellette, Year 13, spoke from his heart and relayed how he and his wife received Partners training in different years. Through Partners, Johnson learned to advocate for his daughter at the school. “Don’t go to the school with ‘guns blazing,’ go as a Partner, willing to negotiate. And who cares if you or the school gets the credit, as long as it is in the best interests of the student. Partners taught me to pick my battles, to work together.”

Julie Yellow Cloud (Yr 15) explained that Partners gave her a voice and she is sharing her voice throughout her reservation by helping families to learn to advocate for their children. Yellow Cloud lives in Porcupine on the Pine Ridge Tribal Nation. “Advocating on a Tribal Nation is totally different than in an urban area, but Partners gave me the knowledge and voice to educate and share with others and to make a difference.”

SD Partners in Policymaking is funded in part by grants from the South Dakota Council on Developmental Disabilities, Center for Disabilities of Sanford School of Medicine at USD, South Dakota Parent Connection, Children’s Care Hospital & School, and the PADD, PAIR, and PAMIS Programs of SDAS. Sandy Stocklin Hook of Pierre is the Program Coordinator.

Celebrating 20 Years of Partners in Policymaking in South Dakota

by Sandy Stocklin Hook

Twenty years! Wow, when Partners began in South Dakota in the fall of 1992, celebrating 20 years was just a dream. And here it is - the Class of 2012 will mark the 20th class to graduate from this outstanding leadership course.

There are 449 individuals across South Dakota who have successfully completed the self-advocacy, skill-building training. The Partner network is strong and changing systems one class at a time.

Individuals with disabilities and their families have always been the true experts on what they need and what they want in order to have positive, successful lives. Our society has believed that people with disabilities need to be “taken care of,” sheltered, and shown the way. NOT TRUE. People with disabilities and their families are quite competent to make the best choices for themselves. Through Partners in Policymaking, they have created a shared vision, enlarging the power base of disability rights advocates.

Over the years, South Dakota Partners in Policymaking has seen many multiple family members complete the training course: 42 husband/wife; 46 parent/child; 8 siblings; and 6 other relatives.

Partners have come away from the training with a sense of belonging, not just surviving. Many have run for public office and been appointed to state/national/local committees, boards, and councils. Partners have evolved from being angry and confused to confident, strong willed, knowledgeable, professional advocates. Many times communities, policymakers, and friends look to Partners graduates for answers, for leadership, and for their knowledge and ideas. Partners training challenges and teaches people to think before they speak, speak before they act, and to act before they ever give up!

Partners have said:

“Partners has totally changed the way I think, act, and speak about people and disabilities. I am very humbled to be part of this great program.”

“We must be diligent in keeping history from repeating itself. We must continue to push forward at every opportunity to remove many of the barriers that continue to prevent people with disabilities from having the same rights and opportunities as people without disabilities.”

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

“I learned how to behave better; about getting a job in the community; learned I’m in control of my own meeting. And now I’m registered to vote!”

“The Partners Program and the annual continuing education training is the best thing that could have ever happened to me, my child, and my reservation.”

“Partners has allowed me to speak up and helped my self-esteem. It allowed new people in my life.”

“Year 20 is a remarkable feat and we are so proud of all the Partners graduates,” stated Sandy Stocklin Hook of Pierre, the Program Coordinator. She added, “Continuing education/graduation will be held in Sioux Falls on April 27-28, 2012, and we’re planning some great activities and speakers. Graduates, make plans now to join us in Sioux Falls at the Ramada that weekend to reminisce with friends and classmates. Derrick Duftesne, from St. Louis, MO, who has presented to nearly every Partners class, will be the keynote speaker for the banquet and you won’t want to miss his inspirational and humorous message.”
Clarence Pigney (pictured) is a Year 13 graduate of Partners in Policymaking and is a former member of South Dakota Advocacy Services' PADD Advisory Council. Clarence recently shared the photos in this article, and called to tell me he had recently sold his recycled jeans products at "Ribs, Rods & Rock 'n Roll," in Vermillion.

Clarence receives services from SESDAC, one of South Dakota’s community support providers. About two years ago, Lori Peterson, an employment specialist, suggested to Clarence that he could make and sell denim items made out of recycled jeans. Clarence ran with the idea and taught himself, through trial and error, how to make several items: Oven mitts; pot holders; coin duffle bags, quilts, book bags, and large duffle bags.

After perfecting his technique, Clarence began accumulating the items he had made and then began selling them. Clarence creates his denim products in several colors besides a variety of blues. The quilt, for example, contains blue, red, green, orange, black, and white denim. Clarence has shown and sold his products at the Farmers Market in Vermillion, as well as at the Rib’s Rocks and Rock ‘n Roll festival held September 9-10, 2011.

In addition to selling his products at events, Clarence also sells them to the public. If one is interested in purchasing items from Clarence, or wants to inquire further into the products he has created, please contact Clarence at clarence.61@yahoo.com. He would love to hear from you and will mail out items to persons outside the Vermillion area.

Graduation Req. / Transition

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...Graduation Req. / Transition...

should be created with the transition elements clearly identified and in place. The Personal Learning Plan requires that these credits be earned between 9th and 12th grade. Due to the complexities of assuring that these plans are effectively carried out, it is difficult to perceive how what could be accomplished without doing some significant planning prior to the start of a student’s 9th grade year.

While logically transition planning/services should be in place prior to students beginning 9th grade, one of the obstacles parents and students face is the language of the special education law and South Dakota’s administrative rules.

ARSD 24:05:27:01.03(8) describes IEP content for transition services: “Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include: (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and (b) The transition services (including courses of study) needed to assist the student in reaching those goals.”

ARSD 24:05:25:16.01 addresses student participation at IEP Team meetings, stating in part: “If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services for a student, and if the meeting is for a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also must:

(1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student;
(2) Indicate that the district will invite the student.”

Student participation and input is required for both Personal Learning Plans and transition services in IEPs. ARSD 24:05:25:16.02 indicates that inviting the...
A student cannot be fully informed and participate in identifying or meeting his postsecondary goals without due consideration of the academic requirements that need to be in place to achieve those goals. One could suggest that the flexibility granted the IEP team in ARSD 24:05:27:12 (allowing IEP Teams to modify units of credit toward graduation) provides the team adequate means of planning for and meeting the student’s graduation requirements. However, if the IEP Team waits until the IEP to be in place when the student turns age 16 to provide transition services, it will be too late in most instances. Depending on their birth date and the age they began school, students may not turn age 16 until well into their 9th grade year, during their 10th grade year, or even the start of their 11th grade year. By then, the time for adequate planning to assure the completion of the academic requirements has passed. The 22-credit graduation requirement, including the specific requirements for math and science, begins with courses taken during the 9th grade year.

The IEP Team would also be late in developing any needed accommodations that could allow the student with a disability to pass the usual three-credit requirement in the areas of math and science. Given that math courses are usually taken in a particular order, it would be impossible to accomplish an effective transition plan at age 16 without requiring students with disabilities to remain in school much longer than their peers without disabilities. In order to determine the courses a student will take beginning in 9th grade, and to evaluate and develop any needed accommodations for completion of particular courses, this planning needs to occur prior to the student entering high school. In other words, it needs to occur during the 8th grade year when the student is 14 or 15 years old. Again, this is particularly important for those students with disabilities wishing to go to a postsecondary setting.

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**South Dakota Report No Longer Available on Cassette**

South Dakota Advocacy Services (SDAS) regrets to inform readers receiving the South Dakota Report via cassette tape that the Braille and Talking Book Library in Pierre will no longer be recording on the reel-to-reel recorder format. It is switching over to a digital format. This issue of the South Dakota Report will be the last in cassette tape format.

Those receiving cassette tapes have two options: SDAS could send the South Dakota Report via email in large print (you would need to provide SDAS your email address). The second option is a CD, which one could listen to just like the cassette tapes.

If you currently receive the South Dakota Report on cassette tapes and wish to continue to receive it, please call SDAS toll-free at 1-800-658-4782 or email middletonp@sdadvocacy.com by no later than January 31, 2012, and let Pam know which format you would prefer.

Thank you!

Pam Middleton, Admin. Asst.
South Dakota Advocacy Services
Phone Number: 605-224-5294
Toll Free: 800-658-4782
Fax Number: 605-224-5125
middletonp@sdadvocacy.com

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**NEW SDAS WEBSITE**

Be sure to check out our new website at www.sdadvocacy.com starting January 1, 2012. SDAS’ website will have a new look, easier navigation, and more features and information about SD Advocacy Services.

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**NDEAM (Continued from page 6)**

Cational setting, workplace, and home. Page is an Assistive Technology Specialist with DakotaLink, a business which, from start to finish, is a one-stop, turn-key solution for assistive technology needs. Participants had the opportunity to try out some of the latest devices.

Members of the Yankton NDEAM committee include: Yankton Rural AHEC (AHEC); SD Vocational Rehabilitation Services (SDRS); Lewis & Clark Behavioral Health Services; SD Human Services Center (HSC); Independent Living Choices (ILC); Ability Building Services (ABS); SD Advocacy Services (SDAS); Southeast Job Link (SEJL); SD Services to the Blind & Visually Impaired (SBVI); and private providers Shirley Mines and Jody Ogstad.
“Be a SuperHero”
Presentation Available

On November 10, John A. Hamilton, SDAS Legal Affairs Director, presented “Be a Superhero for Your Child: Strengthening Parents’ Role in the IEP Process” as part of SD Parent Connection’s 2011-12 Parent Education Series.

South Dakota Parent Connection’s website provides this synopsis: With great challenges, come great responsibilities. Both new and experienced parents can find the IEP/504 Plan process difficult to navigate and overwhelming. This session will arm you with the information and tips you need to be the most effective advocate you can be for your child with special needs. Topics will include: On Equal Ground - Parent Preparation for IEP Meetings, Effective Approaches & Mistakes to Avoid at IEP Meetings, and a discussion of the traits of parents who become superheroes for their child.

One can find and download both the video presentation and the PowerPoint at the SD Parent Connection website, www.spdparent.org, by clicking “Family Life,” then “Parent Education Series.”

Calendar

- January 19-21, 2012 - Partners in Policymaking, Holiday Inn Express, Ft. Pierre
- February 10-11, 2012 - Partners in Policymaking, Holiday Inn Express, Ft. Pierre
- March 16-17, 2012 - Partners in Policymaking, Governors Inn, Pierre
- April 27, 2012 - SDAS Bd. of Directors, 4:00 p.m., Ramada Inn, Sioux Falls
- April 27, 2012 - PADD Advisory Council, 4:00 p.m., Ramada Inn, Sioux Falls
- April 27-28, 2012 - Partners in Policymaking, Ramada Inn, Sioux Falls

Graduation Req. / Transition
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In summary, the graduation requirements by the South Dakota Department of Education requiring Personal Learning Plans, coupled with the special education transition services requirements, should lead to development of transition plans prior to a student’s 9th grade year. Thus, students who are 14 or 15 will need to have transition plans in place. This early planning should include needed accommodations to various courses, including math and science, that will lead the student on an IEP to graduate by meeting the course requirements for all students.

Districts can assist students to develop Personal Learning Plans by using www.sdmylife.com, which is an academic and career planning tool provided to all South Dakota districts free of charge by the Department of Education. The website is currently under review in an effort to expand its use by all students, as well as to develop it into a tool to help students in the special education transition planning process use it more successfully. A useful web-based tool supported by the Transition Liaison Project on transition planning for students with disabilities is found at http://tshp.org. For information on the SD graduation requirements, go to http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=24:43:11:02.