



# South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

## THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

Volume 28, Issue 2

March, 2013

### To App or Not To App ....

by Valorie Ahrendt

**U**nless you have been completely disconnected from society or have lived under a rock for the past few years, you have heard of “apps.” What exactly is an app and how can it be useful for people with disabilities? I am glad you asked! “App” is an abbreviation for *application*. An app is a piece of software or a program that can run on the Internet, on your computer, or on your phone or other electronic devices. Most people use apps for their mobile devices, such as smartphones, iPads, and iPods. Whether you pay for a data plan or you connect through a Wi-Fi hotspot, your mobile device will need internet access to download apps. Some apps will need an Internet connection each time the app is used. Other apps do not need the Internet to work except for the initial download. Not all apps work on all mobile devices. Once you buy a device, you are committed to using the operating system and the type of apps that go with it. The Android, Apple, Microsoft, and BlackBerry mobile operating systems each have “app stores” online where you can look for, download, and install apps. Some online retailers also offer app stores. You will have to use an app store that works with your device’s operating system. Apps can be free or have a fee associated with them. Some apps offer free basic versions, hoping the consumer will like the app enough to upgrade to a paid version with more features. There is no “one app fits all,” so it really comes down to figuring out what you need and researching to find out which app works best for that particular need. When looking at an app in the online store, you will find a description of what the app does and most show pictures of what the



Year 21 Partners in Policymaking with Governor Dennis Daugaard (see p. 18)

app pages look like once it is downloaded. Another tool to use when deciding which app to choose is the review and rating section. Apps will sometimes show how many people have downloaded that particular app, how the app has been rated by people who have downloaded it, and include comments people have made about the app. One word of caution: Do not choose an app solely on the comments and ratings listed. Companies have been found to hire people to pose as real users to write positive reviews for the companies’ own apps. Other companies have posted negative reviews on their competitors’ app sites without even trying the app, just to drive down business. Always read the reviews knowing there could be some bias in the comments.

There are currently thousands of apps available. There really is no area left untouched by apps. There are apps that are strictly for entertainment purposes. These

tend to include categories such as games, photography, artistic creations, music, movies, etc. There are also apps that can provide a service or make life easier with categories such as organization, finance, learning languages, daily schedules, fitness, calendars, activity schedules, American Sign Language, behavior man-

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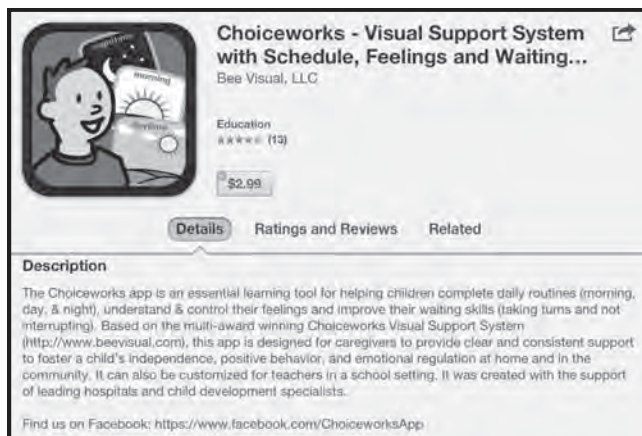
agement, crossing the street, cooking skills, sensory needs, articulation, memory, augmentative communication, social skills, etc. New apps are being introduced every month with no end in sight. It can get overwhelming by the sheer number of apps available.

For persons with disabilities, the first question to ask is, "What areas of my life or my loved one's life need support?" If a person has a need, you can bet an app has been developed for it. For example, a father of two young girls was responsible in the morning with helping the girls get dressed for school. The father was diagnosed with color blindness. He had a difficult time putting outfits together, which meant his daughters' outfits usually included colors that clashed. He found an app named ColorSay for his iPad, which assisted him with determining colors of clothing. He placed his iPad over the article of clothing and the app told him the color of the clothing.

Below are some apps to check out. While I do not endorse any particular apps or any particular operating system, or receive any compensation of any kind, I do hope to shed some light on a wide variety of apps that can assist people with disabilities and promote independence. Each individual may have a different experience with the apps, so as mentioned earlier, no "one app fits all." The apps featured in this article can all be found on iTunes, which is the Apple operating system.

### Choiceworks (by Bee Visual, LLC)

The Choiceworks app helps individuals complete daily routines, understand and control feelings, and improve waiting skills.



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South Dakota Advocacy Services (SDAS) is an independent (not a part of state or federal government or any service provider), private, non-profit corporation established in the State of South Dakota and designated by the Governor to provide protection and advocacy services to eligible South Dakotans with disabilities. SDAS is funded in part by the U.S. Department of Health and Human Services, U.S. Department of Education, and Social Security Administration. Articles are intended for informational purposes only and are not intended as legal advice. Comments on SDAS services and priorities are welcome.

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

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The **South Dakota Report** is an official publication of South Dakota Advocacy Services and is published three times yearly. 3,645 copies of this newsletter were printed by SDAS at a cost of \$1.09 each utilizing federal funds.



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### T2 Mood Tracker (by The National Center for Telehealth and Technology)

The T2 Mood Tracker allows users to monitor their moods on scales, document daily events, and track medication changes to assist health care providers make treatment decisions.



### Telling Your Story (by Minnesota Governor's Council on Developmental Disabilities)

The Telling Your Story app is a free tool that assists individuals to compose and practice their personal story in which they can present to elected public officials or other policymakers when seeking policy change or increasing awareness about disability issues.



### iDress for Weather (by Pebro Productions)

The iDress for Weather app provides current temperatures for the user's location and shows examples of appropriate clothing to wear for the weather conditions. The closet can be customized with pictures of the user's actual clothing.



### First Then Visual Schedule (by Good Karma Applications)

The First Then Visual Schedule app serves to provide a visual schedule for individuals that could benefit from structured step-by-step activities. Personalized photos and voices can be added.



Using technology with mobile devices has proven to be a great benefit for individuals with disabilities. The devices allow

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# WE ARE ALL RELATED

by Marie McQuay

South Dakota Parent Connection, together with Western SD Child Protection Council's Education and Awareness Committee, have been sponsoring Lunch Bag Learning Hours each month in various locations in Rapid City. South Dakota Advocacy Services' staff is always striving to increase their knowledge of and promote cultural diversity awareness. I recently attended a Lunch Bag Learning Hour by Sequoia Crosswhite, the Cultural Relations Advisor for the Children's Home Society in Rockerville. Sequoia's discussion covered cultural/social differences and similarities. He incorporated a film on the effects of boarding schools and the social dysfunctions caused by them on our Reservations today. The film, "Our Spirits Don't Speak English," was produced by Rich-Heape Films. It is a documentary about the history of the US Government policy taking Native American children from their homes, putting them into boarding schools, and enacting a policy to educate the children in the ways of Western Society. The film addresses the schools run by Christian missionaries and those run by the United States Bureau of Indian Affairs. The following article is what I learned from this presentation and film, and it includes some supporting information from the Internet.

We are all related. We all have Native roots somewhere. We are all Native from somewhere. The fact that the Native American people of the North American continent were greatly affected by Manifest Destiny of the United States government cannot be denied. Manifest Destiny can be defined as a road map to establish a perfect nation, or the belief or doctrine, held chiefly in the middle and latter part of the 19th Century, that it was the destiny of the U.S. to expand its territory over the whole of North America and to extend and enhance its political, social, and economic influences. The social dysfunctions experienced by Native American people in the United States are the result of historical, physical, and psychological trauma due to Manifest Destiny. Native American children, ages 4 through 18, were taken from their homes by the federal government and placed in boarding schools set up at various locations in the United States to Christianize, civilize, and educate the Native American children. Their hair was cut short, they were hit if they sang or spoke their native language, and anything they brought with them to the boarding schools was burned, including their clothes. They were given uniforms of European-American style and assigned English names. They were used as a public spectacle, therefore causing the Native American children to lose their identity. The results were dehumanizing for the children and resulted in a loss of their dignity. There were strict orders to follow from their teachers, and they were expected to do grueling chores with stiff punishments if they were not completed. One of the biggest tragedies was the documentation of cases of mental and sexual abuse. Additionally, infectious disease was widespread in the schools due to lack of information about causes and prevention, inadequate sanitation, insufficient funds for meals, overcrowded conditions, and low resistance.

Carlisle Indian Industrial School in Carlisle, PA, was founded as the first Indian Boarding School by Captain Richard Henry Pratt in 1879 and was open until 1918. It became a

model for other Indian boarding schools in various locations in the United States. The school was one of a series of 19<sup>th</sup> Century efforts by the United States government to assimilate over 1,000 Native American children from 39 tribes into the majority culture.

Some of the positive aspects of the schools were that the children learned an additional language of English, Christianity was introduced, and many talented and gifted individuals attended the Carlisle Indian Industrial School and others like it. Among them was James Francis "Jim" Thorpe who was born Wa-Tho-Huk (translated "Bright Path") of Native American Sac and Fox and European American ancestry. He started his athletic career at Carlisle and ended up winning Olympic gold medals in the decathlon and pentathlon in the 1912 Olympics. He also played professional baseball and football and had a career in basketball. He played for and coached the Canton Bull Dogs, which were one of fourteen teams to form the American Professional Football Association (APFA), which would become the National Football League (NFL). Jim was the APFA's first President. He was voted greatest football athlete of the first half of the 20<sup>th</sup> Century. He was also voted "Athlete of the Century" by a poll at the end of the 20<sup>th</sup> Century hosted by ABC.

Charles Eastman also attended Carlisle Indian Industrial School. He was born Hakadah (translated "pitiful last") and later named Ohiye S'a (translated "wins often"). He was of Santee Sioux and Anglo-American ancestry. He was the first Native American author and was a physician, national lecturer, and reformer. He was considered the first Native American author to write American History from a Native American point of view. He published a memoir entitled Indian Boyhood in 1902 and went on to publish ten more books mostly related to Native American culture. He founded 32 Native American Chapters of Young Men's Christian Association and helped found the Camp Fire Girls. He was active in national politics in matters dealing with Indian Rights. He served on the Committee of One Hundred, a reform panel examining federal institutions and activities dealing with Indian Nations.

Luther Standing Bear was also educated at Carlisle. He was born Ota Kte (meaning "Plenty Kill"). He was a Native American writer and actor from the Pine Ridge Reservation in South Dakota. He became a member of the Actors Guild of Hollywood. He published books during his lifetime to educate the public about the Native American and Lakota culture and government policies toward his people. Some of these books include My People the Sioux (1928), Land of the Spotted Eagle (1933), and Stories of the Sioux (1934).

In addition to boarding schools, praying towns were established in an effort to convert Native American tribes to Christianity. The Natives moved into these towns, and the idea behind the praying towns was that Natives would convert to Christianity and give up their old way of life, which included their hunter-gatherer lifestyle, their clothing, and rituals.

I enjoyed listening to Mr. Crosswhite and obtaining the information on the history of the Native American culture.



# *Legal Pull-out Section*

*March 2013*

## 88<sup>th</sup> State Legislative Session Concludes

by Robert J. Kean

**T**he 2013 Legislative Assembly concluded its final regular day on March 8 and the session itself on March 25, which was reserved for consideration of gubernatorial vetoes. With the 2013 session, the state legislature began the first legislative session of the 2012 election cycle. The membership division by party for the 2013 and 2014 legislative sessions remains predominately Republican. In the 2012 election, the Republicans increased their historical edge over the Democrats in the House to an extent that is hard to recall, while the Democrats gained back two seats from historical low numbers in the Senate. In the Senate the current Republican/Democrat membership is 28-7 (during the previous election cycle it was 30-5 and the election cycle before that, 21-14 Republican/Democrat). In the House, the current membership is 53-17 Republican/Democrat (during the previous election cycle it was 50-19 and the election cycle before that, 46-24 Republican/Democrat). Technically, the Republicans gained another seat since Representative Jenna Haggar (District 15, Sioux Falls) ran as a Republican in 2012. Previously, in 2010, she had run as an Independent candidate. During both sessions of the last legislative cycle (2011, 2012) she caucused with the Republicans, giving them an additional vote in the House; making it 51-19 Republican/Democratic.

The impact of the small Democratic numbers from the last several election cycles in both houses continued to be a dramatic and challenging imbalance. The Republicans had a greater than 2/3 majority in both houses, making it a very difficult environment for Democrats to be heard, propose, and sustain substantive legislation reflecting a party position. The decreased Democratic ranks showed throughout the committee structure the last few sessions and continued to do so this year. For example, since the Appropriations Committees of both houses met as a Joint Committee most of the session, it was a challenge for the Democrats to fully partici-

pate on it and in the many other committees dealing with all of the non-budget related legislative items. This was particularly challenging when a legislator had to leave a committee to present a bill he/she was sponsoring. Fewer numbers also made procedural maneuvering more difficult when seeking or requiring compromise on issues and positions to get legislation passed. The continuing large number of Republicans in both houses did not dampen the range or intensity of debate and differences of opinion on the hot button issues. Based on conviction, they were fully voiced across party lines.

This year's legislative calendar called for a 38-day session; three days longer than last year's schedule which called for a 35-day session. The shifting of the legislative calendar continues the practice of not having the same set number of days in the session that came about with the passage of Constitutional Amendment I in November 2008, which called for sessions to "not exceed forty legislative days, excluding Sundays, holidays, and legislative recess." Prior to passage of the amendment, the length of yearly sessions strictly alternated between 35 and 40 days. The "not exceed" language allows for a legislative calendar of less than forty days. This year's schedule followed that used during the 2011 session. Also following recent precedent, this year's session calendar is set up to allow for a majority of three-day weekends. Of the nine weeks the legislature was in regular session, eight of the weeks consisted of four legislative days. The three-day weekends gave legislators a greater opportunity to spend more time at home to pursue personal, professional, and constituent activities, including "cracker barrel" meetings and other locally scheduled activities. The four legislative day work week also allowed greater flexibility to deal with weather situations. Due to blizzard conditions covering most of the state during the weekend leading up to Monday, February 11, the legislature, for the first time in several years, canceled a full regular legislative day due to weather. The calendar was shifted one day and the legislature completed its four-day week on Friday.

The number of bills filed this year in each house of the legislature probably reflected the experience of the members of each. The 75-member House, composed of more new members, filed 250 bills. The 35-member Senate, composed of more experienced members, filed 242 bills. During the past two legislative sessions, 274 House bills were filed in 2012 and 278 in 2011. In the Senate, 197 and 196 bills respectively were filed in those sessions. Interestingly, as of

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people to be more independent and not need as much human support. In the past, people who used devices for communication or some particular need stood out as being different. Nowadays, it is common for people to walk around with a device, so people with disabilities fit in with their peers.

Each future edition of the *South Dakota Report* will feature a column devoted to showcasing apps that can assist individuals with disabilities. So until next time ... Happy Apping!

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the weekend prior to the start of session, only 11 bills were pre-filed (six in the House and five in the Senate). This compared with 50 pre-filed bills at the start of the 2012 Session and 53 at the start of the 2011 Session.

The tone of this year's session was set by the Governor in his December "State of the State" message to a Joint Session of the legislature. At that time, he indicated some of the initiatives that he would undertake. One major initiative would be his interest in changing aspects of the criminal justice system to provide alternatives to incarceration. He pointed out that it is hoped a combination of efforts will reduce the large prison population while maintaining the public safety. The Governor also hinted at proposing efforts to follow-up on two measures he supported that were passed by the 2012 Legislature, but defeated in the state's general election by referendum: Education reform and business incentive grants. The 2012 education reform package was made up of five segments. One segment, school administration personnel evaluations, had to be re-addressed since establishing an evaluation system was one element in the state's successful application to receive a waiver to the requirements of the federal No Child Left Behind (NCLB) law. Redesigning a business incentive grants bill was also mentioned. During the run up to session, several legislators made known their interests. One mentioned revisiting the area of required immunizations to allow parents greater latitude in deciding whether to have their children vaccinated. Another expressed an interest in revisiting the state's excise tax for revision or elimination. Other "annual efforts" were also promised, including: aspects of the ongoing abortion discussion, including adding further restrictions on their availability and ease of access; required drug testing of recipients of public benefits; texting while driving; and, in light of the Newtown, CN, shooting incident, school safety.

The Governor's 2014 Budget Message, delivered at the opening of the session, expanded on the initiatives mentioned in his earlier State of the State message. Some will be significant and substantive. He detailed a proposal to significantly revamp key elements of the state's criminal justice system and change how the state perceives and provides public safety. The effort is described as the "Criminal Justice Initiative" (CJI). The impetus for change are several, including an evolving understanding of the origins, nuanced manifestations, and methodologies in dealing with recidivism, the increasing numbers of persons in the state's prison system, and the rising costs of incarceration. The importance of this effort was emphasized by having the CJI design completed and in bill form (SB 70) and having the bill presented for enrolling shortly after the State of the Judiciary presentation by the Chief Justice on the second day of session by a joint group consisting of the Governor, Chief Justice and legislative leaders. The initiative was also touted as bipartisan, which is reflected by the numbers of signatures from both parties on the bill itself. As presented, the initiative is projected to save the state \$200 million in the next ten years by forestalling the need for new prisons. This will be done through focusing Department of Corrections (DOC) resources on probation and treatment of nonviolent offenders through the use of alternative court structures and sentencing models.

The Governor's presentation also clearly expressed his caution regarding the expansion of the state's Medicaid program. The state is allowed flexibility to establish state-specific Medicaid eligibility according to the federal Affordable Care Act (ACA). Prior to session, Democratic legislators indicated their interest in expanding the eligibility guidelines to allow more people to be covered and receive services. The Governor preemptively expressed a great deal of caution in expanding Medicaid since it was not yet entirely clear what the federal budget situation was and South Dakota did not have precise information as to what level Medicaid will be supported by the federal government. Any Medicaid discussion is further complicated by preparing for ACA requirement deadlines that will begin falling due beginning in 2014. For example, by 2014 states will need to determine income for most applicants for Medicaid eligibility based on their Modified Adjusted Gross Income (MAGI), rather than the traditional monthly income counting rules. Using MAGI promises to simplify and speed up eligibility determinations for the majority of beneficiaries, but will also impact federal match rates. These issues are typical of the rapidly expanding and challenging discussions on how the state will deal with a range of health and service provider questions.

The Governor also shared his proposals for expanding the State Budget. This reflected a guarded optimism that the financial status of the state will continue to strengthen and grow. The optimism, however, was guarded by indications that the dry conditions the state experienced during the late fall and early winter are not subsiding and may have an impact on revenue projections later in the year. The figure heard most often was "3%" when discussing expansion of the state budget programs, including the traditionally large general fund items such as education and service providers. The proposed FY 2014 budget figures indicated that the service providers will not be back to the level of the pre-FY 2012 rates and resultant resources. Interestingly, the Governor challenged the legislature to judiciously expend a potential \$25 million surplus that would be left in the budget after stated expenditures. The challenge was quickly joined and how best to expend the surplus was seemingly woven into every discussion regarding expanded provider services throughout the session.

Following the perennial practice, the legislature used the last week of session (March 4-8) to work its way through some of the more contentious bills and amendments, leading up to the last item on the agenda for both houses, HB 1185, which carried the fiscal year (FY) 2014 budget. Earlier in the final week, bills that generated a large amount of debate in committee and the house of origin were finally resolved. These included bills such as the school sentinel bill (HB 1087), whereby local school districts are given the authority to establish school sentinel programs that could include arming teachers, which passed. Also passing was an economic development bill entitled, "Building South Dakota" (SB 235), which contained several elements relating to funding, transferring resources to support efforts, linking some resources to educational efforts, and addressing the Governor's request to honor previous commitments. Other bills did not get the required support. One

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example of a bill that failed was the out-of-network-providers bill (HB 1142), which required health insurance plans to pay for services by providers who are not members of healthcare networks.

The final hours of committee work was, again, done by the Joint Appropriations Committee to address last-minute efforts to impact the budget. By the time the Committee met for final action on the budget bill, 58 amendments were attached to the bill to be heard. One of the more lengthy segments of the debate was over the requests to expand Medicaid. Prior to the hearing, three specific bills to expand Medicaid were defeated: HB 1205, calling for expanding Medicaid; and HB 1214 and SB 140, proposing to expand Medicaid coverage for pregnancy-related services for pregnant women. HB 1244, specifically prohibiting the expansion of Medicaid, was also defeated. The Medicaid funding amendments offered on HB 1185 proposed to add sufficient state general funds to the existing state program to allow up to 48,000 newly eligible persons to receive services (HB 1185, Amendments: 1185ug, 1185un). It was estimated that a state investment of \$1.5 million would see a federal contribution of a little over \$58 million. During discussion, it was pointed out by those opposing the expansion that there is continuing uncertainty in Washington, DC regarding the federal government's willingness or ability to cover the huge anticipated federal cost increases as the January 1, 2014, Medicaid expansion start date approaches. Stressing caution, the committee was told by a member of the Governor's staff that the Governor planned to create a broad-based committee immediately to study the expansion issue and report back to him and the legislature. It was further stated that the planned timeframe for the committee to conclude its work would allow action by the next legislature and, if need be, legislation passed could contain emergency language to expedite any decision that had to be implemented immediately. With that, the amendments to expand Medicaid were tabled.

During this year's session, the legislature also continued its efforts to develop the legislative branch's capacity to conduct its business and have a more direct involvement with the ongoing administration of its functions. Several years ago, the legislature established the Office of Fiscal Analysis within the Legislative Research Council (LRC), which serves as the legislature's administrative body. The stated purpose of the Office of Fiscal Analysis was for the legislature to have a long-term independent view of the fiscal matters of the state. Last year, a bill was introduced to create the Legislative Planning Committee within the LRC. The bill created an eleven-member committee, four members from the leadership positions within the legislature and seven from the legislature at large. Each year, the committee is to identify six categories for study. While not stating what the specific study areas must be in any given year, there is clear guidance to the general topic areas. The committee is to collect and analyze data, giving special consideration to matters including demographics, education, labor, natural resources, challenges, trends, and growth and efficiency of government. This year, during the final budget discussions in the Joint Appropriations Committee, an amendment was passed to provide additional funds to expand legislative branch operations,

including personnel. Testimony in favor of staff expansion mentioned that staff to be hired may be for filling partisan positions. After the regular legislative session concluded, one legislator publically commented to the effect that it was appropriate to have partisan staff so one person would not have to work on opposing bills at the same time. If staff is employed in this manner, the potential for political partisanship will be a marked departure from the historical non-partisanship nature of bill research and preparation within the LRC.

In South Dakota, the Governor can exercise the veto power to veto an entire bill or a specific line item (SD Constitution Article IV, Section 4). This year, the Governor issued two line item and one bill veto. The bills impacted by the vetoes, what the bills pertained to, type of veto and their final disposition are as follows: HB 1037, appropriation to technical institutes and "K-12 schools" based on student enrollment in fiscal year 2012, line item veto on the use of 2012 data stating that language in the bill is inconsistent with rules setting out the funding formula using more recent data, veto was sustained; HB 1185, appropriations bill, line item veto on money distributed on a one-time basis to technical schools based on FY 2012 actual school full-time equivalent (FTE) stating that it did not follow current rules is using the most recent data, veto was sustained; SB 115, increase the commercial fertilizer inspection fee, bill veto stating that the increased fee is a tax, veto was sustained.

The remainder of this article describes select bills considered during the 2013 session that relate to and/or impact the general areas of interest of SDAS. As importantly, bills that were introduced but did not pass are described because often legislative efforts, both positive and negative, take several years to pass. Also mentioned are bills that bear watching in their application to ensure that they are not misapplied and become detrimental. Reference to SDCL and "current law" means a current statute as set out in South Dakota Codified Laws (SDCL). Bills are numbered sequentially as they are introduced in each legislative house and are often known by that number throughout their legislative history and beyond. Senate bills begin with the number 1 and House bills begin with 1001 (e.g., SB 14; HB 1206). The South Dakota Legislative Research Council provides a wealth of ongoing information on the details of the current and past legislative sessions, summer interim sessions, legislator information, and other areas of interest, including Appropriations Letters of Intent conveying a perspective on budget discussions and directing specific attention to line items in the budget. It is located at: <http://legis.state.sd.us>.

**Mental Health Reform:** Part of the reorganization that Governor Dugaard instituted in his Executive Reorganization Order No. 2011-01 included transferring the Divisions of Mental Health and Drug and Alcohol Abuse, as well as the Human Services Center, from the Department of Human Services to the Department of Social Services. In conjunction with the transfer, a Governor's Behavioral Health Services Workgroup (BHSW) was established. The Workgroup was co-chaired by Lt. Governor Michels and the Governor's Senior Advisor and was composed of various stakeholders, including legislators, providers, associations, advocacy groups, and the Department of

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## ***S.D. Legislative Session***

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Social Services. The Workgroup's purpose was to develop a strategic plan for the future of behavioral health services in South Dakota and make recommendations to the Governor as to implementation. In addition, the Workgroup reviewed then-existing mental health statutes. Since the last major revisions to the mental health statutes were in 1991, the workgroup's goal in the review process was to identify statutes which were outdated and no longer reflected current practice or the current state of behavioral health treatment. The Workgroup also considered a better integration of the treatment of behavioral health conditions, providing an opportunity for a better functioning commitment process that allows the board of mental illness to issue treatment orders at the time of commitment, as well as the ability to issue orders for the commitment and treatment of individuals with co-occurring mental health and alcohol and drug abuse conditions. An overarching goal of the Workgroup, as it considered statute changes, was to remove perceived unnecessary barriers to treatment. After review and discussion, the Workgroup prepared a bill (SB 15) for consideration by the 2012 legislature that focused on several key areas in the provision of mental health services in the state: Qualified Mental Health Professionals (QMHPs); outpatient commitment process; voluntary admissions process and substituted informed consent; integrated commitment process for medication/treatment and co-occurring disorders; treatment; advance directives; and electronic filing. The bill passed and was signed by the Governor.

The Workgroup continued to meet during 2012 to consider additional legislative actions, respond to the impact of the legislation passed in 2012, and review the status of the mental health delivery system in the state and make recommendations. The activities resulted in two additional pieces of legislation (HB 1019 and 1020) that were introduced in the 2013 legislative session. In addition, a report was prepared and presented to the legislature during session. Composition of the Workgroup, agendas, meeting minutes, supporting materials and documents, and the final report can be located at the SD Department of Social Services (DSS) website at: <http://dss.sd.gov/behavioralhealthservices/index.asp>.

HB 1019 authorizes the involuntary treatment of jailed prisoners with psychotropic medications. The need for the bill was brought to the Workgroup's attention by the law enforcement community to address an occasional need where a prisoner refuses to take prescribed medications or where it is determined that a prisoner suffers from a severe mental illness which is likely to improve with treatment and that without treatment the prisoner poses a likelihood of serious harm to self and others. Prior to treatment, a due process procedure before a panel is required, wherein the prisoner has a right to be present, have representation, present evidence, conduct cross examination, and appeal a forced medication order to circuit court. If the treatment exceeds 30 days, the need for continuance must be reviewed. An emergency ten-day treatment may be ordered without review if ordered by two physicians. The bill also provided for a good faith immunity defense to civil or criminal liability. The bill passed through the House Committee, House floor, and Senate Committee without much discussion, but ran into many questions on the Senate

floor. Concerns were raised about the procedure becoming the preferred course of action when any prisoner appears to be obstinate or has an attitude. Other concerns were raised about the costs of having the professionals available for the due process procedures and the level of expertise and training required by the professionals to make the necessary decisions. There was also some initial confusion whether the bill would apply to those persons in a confined arrangement because of being subject to a 24-hour hold prior to further disposition of their case. After extended discussions with staff from the Department of Social Services, the bill passed the Senate 22/13 and was signed by the Governor.

HB 1020 includes the following changes in statute: 1. Creates a definition of "health care" as "any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition;" 2. Deletes the phrase "nonemergency surgery or other medical procedures" and replaces it with "health care" to describe the range of services that can be performed with informed or substituted informed consent; 3. Expands the categories of professionals eligible to become Qualified Mental Health Professionals (QMHPs) to include advance practice nurses, Physician Assistants (PAs), and individuals who would be eligible to practice in South Dakota if licensed and who are employed by the federal government and licensed in another state; 4. Deletes the specific requirements regarding the education and experience of the Human Services Center (HSC) administrator; 5. Expands the use of the mobile crises team to allow QMHPs in a clinic or hospital setting to refer individuals to a mobile crises team; 6. Allows a mental health facility director or attending psychiatrist to initiate a mental illness hold (up to 24 hours) on a minor when a parent gives notice of intent to terminate inpatient treatment when it is believed the minor requires emergency intervention; 7. Changes language in the minors' chapter on involuntary commitment law to make it consistent with changes made during the 2012 session in other sections of the mental health code regarding substituted informed consent; and 8. Changes references in the minors' section of the mental health statutes from "severe mental illness" to "serious emotional disturbance," which is consistent with the definition and terminology when referring to minors.

**Juvenile Competency:** HB 1073 was successfully brought to the legislature at the request of the Chief Justice of the South Dakota Supreme Court to address an issue that is being confronted by the state's Unified Judicial System (UJS). Juveniles who are defendants in South Dakota courts have the right to participate in the proceedings. Circuit Court judges, while presiding in hearings involving juvenile defendants with mental illness or developmental disabilities, have found that when questions arise concerning the competency of the juvenile to participate in court proceedings, the current statutes dealing with adult proceedings do not apply well. There is no current methodology in statute to specifically guide the court in working through the situation when there is a question of the juvenile's competency to continue, and if found to be incompetent, to direct how to provide for the juvenile's needs. The detailed procedures in the bill call for a competency determination, if deemed necessary by the court, to include an examination by a

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psychiatrist or psychologist. A detailed report is required that will inform the court on a number of indicators to guide the court on the further disposition of the proceedings. These include the juvenile's capacity and ability to understand the allegations of the petition; the nature of the proceedings; disclose to counsel facts pertinent to the proceedings; understand the range of dispositions that may be imposed; and testify. If it is found that the juvenile does not have the competency to continue, the examiner must continue to provide further information relating to the condition, including prognosis of recovery and medications being taken. If, after a hearing, the juvenile is found not to be competent to proceed, the court may refer the juvenile to an approved facility for evaluation and treatment. If this happens, the juvenile's situation is reviewed at 60 days or sooner, 180 days, and at one year for competency to continue. If more than a year has elapsed and it does not appear that the juvenile will have competency to proceed, the court is to review the juvenile's condition and determine appropriate placement. The authority of the court to place a juvenile, if competency is not attained, will need to be monitored to avoid conflict with the findings in *Jackson v. Indiana* (1972), wherein the US Supreme Court held that states may not indefinitely confine a criminal defendant solely on the basis of incompetence to stand trial.

**Special Education Student Funds Allocation:** In 1999, the state legislature developed a funding mechanism to allocate general fund resources to local school districts to be specifically applied to students receiving special education based on the students' levels of disability. Students receiving special education and related services are placed into one of six "levels:" 1 - Mild disability; 2 - Cognitive disability or emotional disorder; 3 - Hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury; 4 - Autism; 5 - Multiple disabilities; and 6 - Prolonged assistance. The allocation levels are revisited each year. The amount allocated is based on annually reviewing the local school district tax effort, the applied index factor, and the amounts previously allocated, and adjusting items based on cost data received by the State Department of Education from school districts on the actual costs for the past three years. During the early years of using this method, and probably reflecting the incremental rise in the costs of providing special education, the legislature typically adjusted the amounts allocated upwards each year, with few year-to-year exceptions based on reported data. Reflecting the challenging state economy, no increases occurred during the 2010 and 2011 legislative sessions in an effort to hold education costs. This was despite reported increased costs in serving students receiving special education. Last year, the 2012 session increased the amounts for the current school year in every level except levels 3 and 6, which were reduced. The allocation amounts in SB 15 for the 2014 school year remain the same as last year's levels: 1, \$4,525; 2, \$11,124; 3, \$14,788; 4, \$13,204; 5, \$19,993; and, 6, \$7,205.

SB 15 was amended throughout its hearings, floor action in both Houses, and while in Conference Committee to such an extent that it was placed on the hoghouse bill list. One of the major parts added was provisions setting up and funding

programs to "develop and implement coordinated, early intervening services for students in kindergarten through grade twelve who are not currently identified as needing special education or special education and related services, but who need additional academic and behavioral interventions to succeed in a general education environment to prevent them from being identified as having a special education disability." Early intervening services include professional development for teachers and other school staff to enable them to provide the instructions and interventions. School districts that use funds to pursue these efforts shall annually report to the state Department of Education (DOE) on: the number of students receiving early intervening services and number of students who received early intervening services who subsequently received special education services within two years after receiving the early intervening services. It will be important to closely monitor these programs to ensure that they are not used inadvertently to delay the provision of needed special education services to students who are eligible to receive them. This could happen by not providing an appropriate range of evaluations or being narrowly selective in which evaluations to conduct, or by telling parents that the early intervening must be used prior to further exploring eligibility for special education or developing an individualized education program (IEP).

SB 15 also removed an important safeguard for students who do not have parents or guardians involved in their education and in particular their IEPs. This problem arises from a number of situations including absenteeism, cannot identify a parent, or the child is in a custodial arrangement with the state. Currently, the state DOE must certify persons who are appointed to serve in the role of surrogate parent and act in place of a parent. The centralized process was originally designed to ensure that the surrogate parent had an orientation regarding duties, responsibilities, and a familiarization with key rules, regulations, and statutes pertaining to the rights of the students. The bill does away with the state certification and leaves the entire surrogate effort to the local school district, including key elements such as qualifications, conflicts of interest, and trainings on the role of the surrogate to act in the best interests of the student.

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## **15th Annual YAMWI Conference June 5-6, 2013**

The 15th Annual Yankton Area Mental Wellness, Inc. (YAMWI) Conference will be held June 5-6, 2013, at Mount Marty College in Yankton. The conference theme is *Integration: Cornerstones of Care*. Information on the conference schedule, speakers, and registration are on the YAMWI website, <http://www.yamwi.org/>. For more information, one can also contact:

**Yankton Area Mental Illness, Inc.  
c/o Lewis & Clark Behavioral Health Services, Inc.  
1028 Walnut  
Yankton, SD 57078  
(605) 665-4659, ext. 218  
[YAMWI.org@gmail.com](mailto:YAMWI.org@gmail.com)**

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**Funding Students in Treatment Centers:** SB 158 addressed a long-standing issue regarding funding educational programs for public school students placed in residential treatment centers, an intensive residential treatment, or licensed group care center. For years, school districts wherein the students resided and the school districts where the treatment or group care facilities were located disputed which school district was responsible for the education costs related to the students' stays, even to the point of litigation. Often, while the dispute was being resolved, which could be lengthy, the treatment facility would not be paid for the services it was providing to the student. The bill sets out a process defining the responsibility, amounts to be paid by the school district responsible, and reimbursement for the school districts. If the child is not living with parents or guardian, the school residence of the child is where the parents or guardian reside subject to SDCL 13-28-9, which deals with changing of residence and separated parents. If a child is enrolled in a public school, the tuition is the responsibility of the school where the student was enrolled at the time of placement. The amount of tuition is set for students not receiving special education as a percentage based on the annual per-student funding allocation and number of days served by the provider. The school district providing the education will have the costs reimbursed by the state.

**Updating Terminology:** A bill introduced by the Department of Human Services (DHS) marks the first time the legislature passed a bill addressing the continuing use of language describing a disability throughout the state statutes that, over time, has become outdated, misapplied, no longer accurately descriptive, and in some instances pejorative. SB 26 systematically revised a number of current statutes by striking the words "mental retardation" and replaced them with "individuals with intellectual disabilities." The bill not only included changes to the part of the law dealing with mental health (SDCL 27A - Mentally Ill Persons) and developmental disabilities (SDCL 27B - Developmentally Disabled Persons), but also wherever the term "mental retardation" appeared in other parts of the codified laws, *i.e.*, Title 10, Taxation; Title 13, Education; and Title 28, Public Welfare and Assistance. The bill follows several initiatives taking place at the national level, including Congress and the Social Security Administration, to move away from what are now considered inappropriate descriptors of persons.

DHS also introduced successful bills that clarified and revised language in the rules relating the Medicaid waiver programs (HB 1023) and repealed two outdated and no longer used programs within the department: Talking Books (set out at SDCL 28-9-34); and a Developmental Disabilities Council grant procedure that is currently in the administrative rules at ARSD 46:14:03.

**Returning Hearing Aids:** HB 1011 allows a purchaser of hearing aids a trial period wherein the product can be returned and the purchase price refunded, less a percentage allowed to the seller for services rendered. It is important to note that the trial period relates to a change of mind by the purchaser towards the product for personal reasons, *i.e.*, cosmetic "looks" or "feel" of the device, and not because of a defect in the device. If the

device is defective, the provisions of the state's lemon law, set out at SDCL 37-31, would take precedent over the provisions of HB 1011. The lemon law requires replacement of a non-conforming assistive device or a full refund. It is important to keep this important distinction in mind.

**Criminal Justice Initiative:** The passage of SB 70 will substantively change many aspects of the criminal justice system in the state. Generally described as the "Criminal Justice Initiative," the bill represents the efforts and recommendations of a workgroup representing the varied interests involved. The many changes proposed by the 32-page bill will impact current processes and create new ones, including: facilitate development and functioning of drug courts; fund diversion programs; adopt a graduated scheme of sanctions for managing parolees and probationers enrolled in alternative programs; authorize a tribal parole pilot program; utilize evidence-based risk and needs assessments; set out requirements for enhanced, evidence-based supervision practices; establish training requirements for judges, probation officers, parole agents, and parole board members; create a statewide automated victim information and notification system and direct improvements to the system of collection of restitution; make changes in punishments and penalties for certain targeted felonies to focus prison space on violent and career criminals; establish procedures for evaluating the effectiveness of evidence-based practices; and establish a reinvestment program for the purposes of improving public safety and reducing recidivism. The enormity of the many proposed changes will require time and resources to achieve. Actions to be taken are defined throughout the bill, as well as are areas of responsibility and deadlines.

### **Bills That Did Not Pass:**

**SB 98:** SB 98 proposed an exception to South Dakota's mandatory immunization requirements based on a "personal religious commitment." The proposed exemption is an expansion from the current requirement that the reason be based on a religious doctrine or teachings. It appeared that the exemptions proposed in the bill would have been difficult, if not impossible, to verify beyond the expressed statement of the parent since a personal religious commitment does not have to be founded on any particular recognized doctrine or teaching.

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## **Lorna Williams Resigns**

Lorna Williams, an Advocacy Services Representative in the Pierre office since June 2000, has resigned her position due to health issues. During her tenure with South Dakota Advocacy Services (SDAS), Lorna ably and diligently worked on behalf of her clients in several of the agency's programs, most notably the Protection and Advocacy for Individuals with Mental Illness. She was particularly skillful in assisting persons who were clients of the state's Native American Vocational Rehabilitation 121 Programs. In addition, Lorna participated in the SDAS training activities including Partners in Policymaking. The SDAS Board of Directors joins staff in wishing Lorna the very best.



# The “NEW” Prior Written Notice in South Dakota

by John A. Hamilton

**T**he requirement that school districts provide parents with *Prior Written Notice* in a number of circumstances under IDEA is as old as the law itself. The federal regulations, at 34 C.F.R. § 300.503(a), require prior written notice:

*a reasonable time before the public agency –*

*(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or*

*(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.*

South Dakota has long ago defined “a reasonable time” as *five calendar days*. Per 34 C.F.R. §300.503(b), the prior written notice must contain the following:

*A description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of this part; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency’s proposal or refusal.*

South Dakota had previously addressed the prior written notice requirements by directing districts to send parents notice of IEP Team meetings at least five days prior to the meeting and include in that notice all of the above requirements, *i.e.*, the actions proposed (or refused), an explanation, what they are based on, etc. Thus, if a district was going to propose a different placement, different services, evaluations, or a change in eligibility or eligibility category, parents received prior written notice meeting the above requirements at least five days prior to the IEP Team meeting.

Typically, an IEP Team refusal does not occur until a parent requests something at an IEP Team meeting, such as additional related services or a more/less restrictive placement. If a district refused that request, it is required to provide parents with prior written notice that meets the above requirements. Despite this mandatory requirement, many parents have had to specifically request/demand such notice and have not always been successful in getting their district

to provide it. The language of IDEA regarding a refusal has always been perplexing. Literally, it requires districts to provide written notice five days before a refusal. Thus, if a parent requests a service at an IEP Team meeting and the district refuses the parental request, the language of IDEA would require the district to provide written notice to the parent stating it is going to refuse the request in five days (despite the fact that the refusal has already been made). The literal reading of that provision has never made a lot of sense in practice. As discussed later in this article, the provision is actually intended to allow parents to access their due process rights prior to implementation of what was decided at an IEP Team meeting or otherwise.

The law, regulations, and rules on prior written notice have not changed. An increased awareness on the national level of prior written notice issues led South Dakota to consult with its technical assistance centers and research practices in other states. As a result, South Dakota revised its sample forms and informed districts of these changes last summer, giving them up to a year to implement the changes. Many districts began implementing the changes immediately. As a result, parents may have left IEP Team meetings somewhat bewildered regarding the changes in forms and procedures. The remainder of this article will discuss these changes and how they apply to different situations where prior written notice is required, and will conclude with a discussion of some questions/concerns with the new processes.

## Meeting Notice

The State’s sample form previously used when inviting parents to IEP Team meetings was labeled, “Prior Written Notice.” The major change was to differentiate between a “Meeting Notice” and “Prior Written Notice.” The Meeting Notice is simply to invite parents to an IEP Team meeting and is designed to ensure parent participation. As before, it must include the purpose, time, and location of the meeting and who will be in attendance. It must inform parents they may invite other individuals to attend, inform parents that the student will be invited if a purpose is consideration of post-secondary goals and transition services, and inform parents if it is an initial IEP for a child transitioning from Part C (Birth to three) to Part B services, the district will invite the Part C coordinator if the parent requests. It must also include provisions for obtaining parental consent to invite individuals from other agencies to attend.

The purpose of the Meeting Notice is to provide information parents need so that they can come prepared to fully participate in the IEP Team meeting. Districts should therefore

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## **NEW Prior Written Notice**

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include information in the Meeting Notice on what will be discussed, but not proposed outcomes. The Meeting Notice should contain enough information so that parents can decide who they want to bring to the meeting, as well as information they want to bring and questions they want to ask.

Because the Meeting Notice no longer contains the prior written notice requirements, the five-day notice requirement in South Dakota's administrative rules no longer applies. Thus, there is no specific amount of time prior to IEP Team meetings wherein districts must give the Meeting Notice to parents. As a result, the provision in the prior form allowing parents to waive the five-day notice has been removed. While districts no longer have to provide five-day notice prior to IEP Team meetings, ARSD 24:05:25:16 still requires that districts "shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place." The State has recommended that districts continue to provide at least five days notice of IEP Team meetings.

The new Meeting Notice form also contains a signature line for parents, wherein they are to indicate: "1) I will attend the meeting as scheduled; 2) I will participate in the meeting by phone or other means. I can be reached at the following phone number on the date/time mentioned above; 3) I am unable to attend the meeting as scheduled above and would like to reschedule the meeting to another date and time. I am available to attend a meeting on the following dates and times; or 4) I consent to waive my right to participate in my child's meeting to develop, review, or revise the IEP. Proceed with the meeting." The State described this portion of the Meeting Notice as "district optional."

### **Prior Written Notice**

"Prior Written Notice" is now contained on a separate form. Instead of being provided to parents *before* an IEP Team meeting, now prior written notice is given to parents *after* the IEP Team has met and made changes to the IEP. That way, it provides a five-day waiting period before the IEP (or other decision) goes into effect. The federal Department of Education had taken the position that providing written notice prior to meetings could suggest that the district's proposal was improperly arrived at without parental participation. Of course, one could respond to that by stating, "Isn't that what the IEP Team meeting is for, to get parental input on the district's proposal?" While the answer is clearly "yes," the federal Department of Education apparently wants to ensure districts obtain parental input before proposing a change.

Like the Meeting Notice, Prior Written Notice is a communication tool. It is also intended as a closure tool. The prior written notice parents are now to receive will contain the decisions of the IEP Team (after parental input). A district may write/type the prior written notice and give it to the parent before leaving the meeting, or may provide it to the parents following the meeting through other means (email, mail, hand-delivery). When the parent receives the written

notice, it will state that the district will implement the changes in five days from *receipt of the notice*. The day of receipt counts as the first day. For example, if a meeting was held March 22, and the district provided the prior written notice to the parent at the meeting, the notice would indicate the changes will go into effect on March 27 (the sixth day). On the other hand, if the district mails the prior written notice on March 23 and the parent receives it on March 25, March 25 is the first day, March 29 is the fifth day, and the changes would go into effect on March 30. The State suggests if the notice is mailed, the district should send it certified so the district knows the parent received it and the date it was received. Similarly, if parents do not attend the meeting, the district will implement the IEP five days after parents receive the written notice. If the sixth day falls on a weekend or holiday, the IEP will be implemented the following school day.

Prior written notice must be given to parents regardless of who initiated the meeting and regardless of whether there was parental agreement with the IEP changes. It must be provided following *all* IEP Team meetings. It must also be provided under the provisions of IDEA where a formal IEP Team meeting is not held, but the parent and district agreed to changes in the IEP (such as a quick meeting in the hallway to change something).

Parents may waive the five-day requirement so that changes can be implemented without the five-day waiting period. If parents are in agreement with the new IEP or addendum, they should waive the five-day notice so that the new services can begin. When parents waive the five-day notice, districts need to communicate when the new IEP/services will actually begin. In other words, if the district will need a day or two to put some things in place, they need to communicate that with parents. The IEP/services should begin before the fifth day; otherwise, there is no point in parents waiving the five-day notice. OSEP has stated that providing prior written notice following the IEP Team meeting "allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth." Letter to Lieberman, 52 IDELR 18 (OSEP 2008). If parents are not sure of, or disagree with, the changes, they definitely should take advantage of the five days to think about the changes and consult with others as needed.

At the end of the five days, if the parent takes no action, the district will implement the changes. For example, if a district proposed changing a child's placement and the parent is not sure or disagrees, that change will occur five days after the parent receives the prior written notice unless within the five days the parent contacts the district requesting to meet to further discuss the issue ("fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth" as OSEP stated) or files a Due Process Complaint to contest the change in the child's placement. If the parent files a Due Process Complaint, the "stay-put" regulation requires the child to remain in the current placement during the course of the due process proceedings.

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## **NEW Prior Written Notice**

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The change in how South Dakota implements the five-day prior written notice requirement will affect the scheduling of annual IEP Team meetings. Because of the five-day notice, schools are directed to never assume parents will waive the five days and hold annual meetings at least five days prior to the IEP's expiration date. If the meeting is held and parents receive their prior written notice less than five days before the expiration date, and parents do not waive the five day notice, the IEP will lapse and the district will be out of compliance. In situations where scheduling a meeting is difficult due to parent schedules or where obtaining parental participation is historically difficult, districts will want to begin the process sooner to ensure that the meeting can ultimately get scheduled no later than five days prior to the IEP's expiration date.

While South Dakota has developed a new Prior Written Notice form for districts to use, there is no legal requirement as to the form of the notice, so long as it meets the content requirements described above in 34 C.F.R. § 300.503(b). Prior written notice may involve multiple decisions at a given time (evaluations, identification, placement, and other IEP changes). Especially at the annual IEP Team meeting, there will be numerous decisions made. The IEP can be part of the documents that consist of the prior written notice, as the IEP would set out the proposal for services. It may even set out some of the reasons. The IEP, however, will not contain refusals and will not naturally contain all the prior written notice requirements. If the IEP is used, districts must ensure all the other requirements of prior written notice are otherwise provided to parents.

### **When Is Prior Written Notice Required?**

The above discussion has centered on requirements for districts to provide prior written notice following changes in IEPs. Prior written notice is actually required in several other areas of IDEA:

- ◆ When the IEP Team makes decisions on evaluations (and reevaluations) proposed or refused. Telling a parent "not now" is a refusal requiring prior written notice. It must also be provided following a referral for evaluation if the district determines it will not evaluate. The State has developed a new sample form specifically for evaluations.
- ◆ Following eligibility determinations and determinations regarding the child's specific eligibility category.
- ◆ Regarding graduation or aging out of services because they are a change in the student's placement.
- ◆ When taking disciplinary action.
- ◆ With transfer of parental rights.
- ◆ When parents revoke consent in writing for some or all IEP services. In this situation, districts should specifically detail the effect of the revocation so parents understand what the child will be losing from the revocation and what will happen with the child (e.g.,

placement in the regular classroom and its expectations, regular discipline, etc.). Because the revocation will not take effect for five days, the information in the prior written notice gives parents time to further consider their decision and the opportunity to change their minds.

### **Concerns/Questions**

With the addition of the Meeting Notice and the new interpretation of Prior Written Notice, there are bound to be questions regarding how to use them. SDAS also has concerns with both the use and potential misuse of these documents and believes there is a need to revise some administrative rules.

### **Meeting Notice**

The Meeting Notice is supposed to be a communication tool so that parents can prepare to fully participate in IEP Team meetings. The new sample form, however, simply provides the following check boxes for the "purpose" of the meeting: 1) discussion of evaluation results; 2) determine eligibility for special education/related services; 3) develop an IEP; 4) amend your child's IEP; 5) transition planning; and 6) "other." Only "other" provides a line in which to add information. Hopefully districts are or will be using this line to fully describe the topics or areas of potential change at the upcoming IEP Team meeting (but not proposed outcomes) so that parents will be able to determine who they may want to invite to the meeting and otherwise prepare so that they can fully participate. If districts fail to provide this level of information, parents will be caught off-guard at IEP Team meetings and the spirit of the Meeting Notice will be lost. As SDAS has recommended previously in the *South Dakota Report*, parents should always request a copy of any new evaluation reports and draft IEPs to review prior to IEP Team meetings and refuse to meet until they have had sufficient opportunity to review them.

### **Clear and Consistent Education**

While presumably most of the country has been providing prior written notice after IEP Team meetings, eligibility decisions, evaluation decisions, etc., changing how prior written notice is provided in South Dakota requires a different mindset. To effectively implement the changes, districts must clearly and consistently educate their staff of the changes. Staff, in turn, must clearly and consistently educate parents. Education is only the first step; comprehension is the other. If staff do not fully understand the changes, the information they share with parents will be misleading. Even if staff fully explain the effect of the changes, parents may not understand or misinterpret what they are told. Growing pains may be inevitable.

### **Parents Seeking Additional Meeting**

As discussed above, the five-day notice does not preclude parents from wanting to further discuss issues. For example, if parents disagree with a district proposal, but during the five days come up with another option, the parents can certainly contact the district to request another meeting. What happens from there is less clear. Does the district have to agree to

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**(Continued on page 14)**

## ***NEW Prior Written Notice***

***(Continued from page 13)***

meet again? If the requested meeting is scheduled, what happens to the district's proposal from the first meeting at the end of the five days from when the district provided the prior written notice? Does the district's proposed IEP go into effect while waiting for the new meeting, or is it put on hold pending the new meeting? One would presume the latter.

### **Parents Asking Questions About Proposal(s)**

What if the parent contacts the district with questions about the district's proposal within the five-day notice period, but the district cannot provide the answers before the five-day notice period ends? Again, does the IEP go into effect, or does it go on hold pending the district's responses? In order to give the parents a chance to digest the district's responses, should the five-day notice start over at that point?

### **When Must Parents Receive Prior Written Notice?**

While changes are to take effect on the sixth day after the parent *receives* prior written notice, there is no specific requirement for when districts must provide the prior written notice. As discussed above, the written notice may be given to parents at the conclusion of an IEP Team meeting, or following the meeting through other means. If it is not provided at the meeting, there is nothing in South Dakota's administrative rules indicating how long a district can wait before providing it to parents. Is a week too long? What about two weeks? A month? A district wanting to delay paying for a service could simply delay providing parents the prior written notice. Parents need to be mindful of these situations and, as needed, demand the district provide the prior written notice.

### **Filing a Due Process Complaint**

Providing prior written notice after IEP Team meeting decisions are made (or other types of decisions requiring prior written notice) gives parents the opportunity to file a Due Process Complaint before changes go into effect. This is an aspect of the changes that requires particular interpretation. Parents need to understand the two-year statute of limitations for filing a Due Process Complaint is still in place. Under the prior way of doing things, the IEP Team would meet and determine the child's services. This could include situations where the parents agree, disagree, or have something they proposed rejected by the district. Following the meeting, the district would implement the changes. If parents disagreed, they had up to two years to file a Due Process Complaint to contest the district's decision. Of course, depending on the issue of disagreement, they may want to challenge the district's decision sooner rather than later.

Under the "new" prior written notice, are parents told they have to file a Due Process Complaint within the five calendar days if they want to contest the IEP Team decision? Or are they told they need to file a Due Process Complaint within five days if they do not want the changes to go into effect, but they still have the right to challenge the district's decision for two years after the changes go into effect? If this is not explained well, parents may be led to believe the two-year stat-

ute of limitations no longer exists and they must file a Due Process Complaint within five days or otherwise lose that right. If this is not explained well, it would not be unexpected to see an increase in the number of due process hearings sought.

### **Stay-Put**

Questions also surround application of IDEA's "stay-put" provision. For example, assume the parents and district cannot agree on a child's placement and the district is proposing a residential placement. If parents filed their Due Process Complaint within the five-day notice period, stay-put clearly applies. If, however, the parent filed a Due Process Complaint to challenge the placement a month after receiving prior written notice, the child presumably would have been placed residentially when the five-day waiting period ended. Since the parent is now formally disputing the appropriateness of the placement, what is the stay-put placement? Is it the child's current residential placement (the "then current placement" described in the regulations), or is it the last placement the parent agreed with - the placement prior to the residential placement? The phrase, "last agreed-upon placement," is also used when describing stay-put, but it is likely the last agreed-upon placement would be deemed the residential placement because it was not challenged prior to expiration of the five-day notice.

Stay-put is one of the most powerful procedural safeguards parents have under IDEA. Because parents must invoke stay-put by filing a Due Process Complaint within South Dakota's five-day waiting period, parents may feel forced to request due process to preserve stay-put, even if they may have ultimately decided not to if given more time.

### **Practical Considerations**

South Dakota defines "a reasonable time" as five calendar days for purposes of providing prior written notice. The five-day written notice provision worked well when prior written notice was provided prior to an IEP Team meeting. Now that it is provided after the meeting, from a practical standpoint, the five-day waiting period is not a lot of time. Consider this: If parents leave an IEP Team meeting held on a Thursday with prior written notice in hand, already knowing they want to challenge the district's decision, the first thing they need to do is to try to contact an attorney and schedule a meeting. While it is certainly possible the attorney has nothing going on and could meet immediately, it is much more likely the attorney has other things scheduled and cannot meet until Monday (or Tuesday). In this scenario, the sixth calendar day (the day the district will implement the changes) is Tuesday. It would be virtually impossible for the attorney to meet with the parents, obtain and review records, analyze the situation to determine whether to take the case, and draft and file a Due Process Complaint all on Monday.

SDAS believes five calendar days simply does not work well with South Dakota's new prior written notice procedure. For parents who do not agree with changes and do not waive the five-day waiting period, five calendar days is no longer

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***NEW Prior Written Notice***

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



## ***S.D. Legislative Session***

***(Continued from page 10)***

The legislature has been reluctant to expand the exemptions during the past several sessions, claiming the greater good is to be done by protecting the child/children in question and their peer groups with whom they would be in contact. The sponsor withdrew the bill.

**HB 1188:** The bill, as originally submitted, proposed a framework to determine when a person would be considered sufficiently dangerous to self or others due to a mental illness to lose the 2<sup>nd</sup> Amendment right to purchase and possess weapons. At the start of the committee hearing, the sponsor offered an amendment that drastically reduced the procedural aspects of the determination process and how a determination to not be allowed to purchase or possess a weapon could be appealed. The accepted amendment basically stated that if a person was involuntarily committed through the county board of mental health procedure, the person's name would be forwarded to the state's Attorney General's office for further submission to federal level agencies. The amendment also provided for a method to have the right to possess weapons reinstated through a court process. The bill was offered as a way for South Dakota to get ahead of any federal scheme that would be imposed on the state to require persons to be denied the right to purchase or have weapons. The motion to "Do Pass" the bill as amended failed on a 6/6 tie vote. The bill was then killed by being deferred to the 41<sup>st</sup> legislative day by a vote of 7/5.

Looking ahead, the 89<sup>th</sup> Legislative Session Calendar has been published and is available on the LRC website, <http://legis.state.sd.us/sessions/2013/2014calendar.pdf>. The session will begin the last possible day in January, January 14, 2014, in accordance with the requirement of starting session on the "second Tuesday in January." The 2014 session will again extend 38 days. The regular part of the session will be 37 days and run from January 14 through March 14, with March 31 (38<sup>th</sup> day) being reserved for consideration of gubernatorial vetoes. The session will consist of nine weeks; the first eight will be four-day weeks and the last a five-day week. It is not too early to begin considering how one will choose to be involved in the legislative process and begin planning.

## ***NEW Prior Written Notice***

***(Continued from page 14)***

"a reasonable time," in situations where invoking stay-put is important. SDAS believes South Dakota needs to follow the lead of other States that define "a reasonable time" as a longer period of time. For example, Michigan defines "a reasonable time" as 15 school days, such that if parents do not waive the notice, the changes get implemented in 15 school days. While there is still a sense of urgency, the additional time allows parents time to fully consider what they want to do, consult with others, and/or hire an attorney, as opposed to trying to do all that within the five calendar days. New Jersey uses 15 calendar days, while Pennsylvania uses 10 calendar days.

Furthermore, to avoid situations where districts fail to provide written notice for lengthy periods to put-off

providing new services, SDAS believes South Dakota also needs to put a time limit on when prior written notice must be given. Michigan, for example, requires prior written notice to be given to parents no later than seven school days following an IEP Team meeting.

## **Conclusion**

While the language of the law has not changed, application of IDEA's prior written notice requirement has. It will be important for school personnel and parents alike to be on the "same page" in understanding the process and impact of these changes. A consistent message and application statewide is essential to uniform application. Nonetheless, there are still some unanswered questions and a need to revise South Dakota's administrative rules concerning the applicable timeframes. If you have questions, please contact South Dakota Advocacy Services, at 1-800-658-4782.

# **Educational Services When Expelled**

**by Gail C. Eichstadt**

**S**taff at South Dakota Advocacy Services counsel students on Individual Education Programs (IEPs) and their parents or guardians about their rights when they have been suspended or expelled from school. If students on IEPs have been suspended for more than ten school days or expelled from school, they have a right to educational services in another setting that enable them to progress toward meeting the goals written in their IEPs and to participate in the general education curriculum. See 34 C.F.R. §300.530(d).

Many parents, teachers, and school administrators are unaware that under state law, a school district may provide educational services in an alternative setting to any expelled student. South Dakota Codified Law 13-32-4 does not prevent expelled students, even those who are not on an IEP, from receiving educational services from the school district. The last sentence states, "This section does not prohibit a local school district from providing educational services to an expelled student in an alternative setting." See SDCL 13-32-4 (School board to assist in discipline--

Suspension and expulsion of pupils--Report to local authorities--Hearings--Alternative settings). While districts are provided this discretion, parents, guardians, or an emancipated student will probably have to ask for the educational services during an expulsion in most instances.

School districts are not required to include information about this one sentence in SDCL 13-32-4 when following due process procedures. See ARSD 24:07:03, Long-Term Suspension Procedure; and 24:07:02, Short-term Suspension Procedure. The statute gives no guidance on the type, amount, or length of educational services. If an expelled student wants the district to consider providing educational services during the expulsion, he or she should ask for the services, as the school administrator may not even be aware it is a possibility. Because students under expulsion cannot enroll in any other school district in the state until the expulsion ends, SDCL 13-32-4 gives them a chance for some learning until they can return to school.

# Motor Vehicle License Plates for Veterans with Disabilities

by Chris C. Houlette

**S**outh Dakota law allows certain veterans of the armed services to receive special motor vehicle license plates. South Dakota Codified Law (hereinafter referred to as "SDCL") Section 32-5-108 provides that certain individuals can receive such a license plate. These persons include:

1. Any South Dakota resident veteran who owns a motor vehicle, has received the United States Veterans' Administration K Award, and meets the qualifications set out in Public Law 187 of the Eighty-second Congress to receive an automobile;
2. A "veteran who has been rated as in receipt of a statutory benefit for loss or loss of use of one or more extremities;" or
3. (through June 30, 2013), A "veteran who receives a veteran's allotment for total disability under compensation which is considered a service-connected injury."

House Bill 1118, which the SD Legislature passed and was signed into law, amended SDCL 32-5-108. The new law, effective July 1, 2013, struck the clause in number 3 above, "total disability under compensation which is considered a service-connected injury," and substituted, "a total service-connected disability." Thus, the third criteria now reads, "a veteran who receives a veteran's allotment for a total service-connected disability."

In addition, SDCL 32-5-108 requires that a veteran needs to "have incurred disabling injuries while serving the United States in active duty during a time of war or while participating in a military mission involving armed conflict." HB 1118 strikes "disabling injuries" and substitutes "the disability." Therefore, it reads that a veteran needs to "have incurred the disability while serving the United States in active duty during a time of war or while participating in a military mission in-

volving armed conflict." Such a change may make it easier for veterans to meet this requirement by proving a single disability, rather than "disabling injuries."

An eligible veteran under SDCL 32-5-108 can apply for and receive up to two sets of license plates from the Department of Motor Vehicles for an automobile, pickup truck, van, or motorcycle. The veteran can choose to use one of the sets of plates on a noncommercial pickup truck weighing more than six thousand pounds or a motor home.

The plate has "a white background bordered on the left by a blue field with white stars and on the right by alternating red and white stripes," and the phrase "Disabled Veteran" appears in blue in at least ten point bold type on the plate. SDCL 32-5-108 also addresses costs.

A person's ability to receive veterans plates described in this article cannot be presumed and is subject to the requirements set forth by law. The determination whether there is eligibility is made on a case-by-case basis.

## March was Intellectual and Developmental Disabilities and Traumatic Brain Injury Awareness Month



Governor Dennis Daugaard signed a proclamation declaring March as Intellectual and Developmental Disabilities and Traumatic Brain Injury Awareness Month in South Dakota. "Look Beyond" is the theme for 2013. Robert J. Kean, Executive Director of SD Advocacy Services, and Advocacy staff; several self-advocates and staff from OAHE, Inc., of Pierre; and Arlene Poncelet, Executive Director of the SD Council on Developmental Disabilities, attended a March 5 proclamation signing at Pierre City Hall. Mayor Laurie Gill presented the proclamation and thanked all the individuals for attending and being active in the community. Kean reminded those in attendance that "people with disabilities are our neighbors, our co-workers, our friends." He went on to encourage everyone to "Look Beyond" the disability and realize what the person has to offer. Mayor Sam Tidball signed and presented a similar proclamation at the March 4 Fort Pierre City Council meeting.



# 24/7 Nursing Care for People with Developmental Disabilities

by Charlene Hay

**T**here are 19 Community Support Providers (CSP) in South Dakota that provide residential, vocational, service coordination, and nursing care for individuals with developmental disabilities. The Division of Developmental Disabilities has funding, certification, and monitoring responsibilities for these non-profit community agencies. DakotAbilities is one of the 19 CSPs in the state. Shelley Graham, Director of

Program Services at DakotAbilities, took time out of her busy day to discuss a unique program that is provided at the Valley House in Sioux Falls, SD.

Valley House is a home designated to provide residential 24/7 nursing care for people with developmental disabilities and intense medical needs. These services at Valley House have been in place since February 1986. Fifteen individuals

can live at Valley House, provided they meet the requirement of having a developmental disability, require non-delegable nursing care, and meet funding requirements. "Non-delegable nursing care" means the services cannot be legally provided by non-nursing staff.

While most or all CSPs provide nursing care, DakotAbilities' Valley House is different because it provides 24/7 nursing care on-site for individuals needing more medical attention. DakotAbilities is the only CSP in the state of South Dakota that offers this extensive medical care within the residential setting.

DakotAbilities is also able to provide services to people who would require medical care elsewhere. For example, people may typically have had to go to a hospital, nursing home, or rehabilitation facility for appropriate medical care. The 24-hour nursing support at the Valley House allows individuals to receive the needed care in their home. This has been a great benefit to individuals and has also proven to be less costly. The non-delegable nursing care may consist of, but is not limited to, treatment such as deep lung suctioning, insulin injections for brittle diabetics, intense monitoring of fluids, care for tracheotomies and newly-inserted Gastroenterology Tubes, care for people with uncontrollable seizures, and care for individuals discharged from hospitals who require ongoing IV therapy.

Valley House is staffed by RNs, LPNs, and three-to-five Residential Assistants who are certified through the South Dakota Board of Nursing and adhere to the "Scope of Nursing Practice" designated by law under the Board of Nursing. Valley House also has a cook, allowing DakotAbilities to meeting individual dietary needs.

Occasionally, there are people living at Valley House who do not require 24/7 nursing care. Those individuals are admitted to Valley House with the under-

## ANXIETY IN THE CLASSROOM

by Norma Vron dran

**S**teve, fourth grade, has difficulty with reading and math. Reading and math classes are the third and fourth subjects during a regular day. Steve has from the beginning of his day until 3<sup>rd</sup> period to become stressed as he worries he will be called upon to read aloud and everyone will laugh at him. By fourth period math, he is already so anxious that he asks to go home with a stomach ache.

Amanda is a 13-year old female and has always been an A student. During her final year of middle school, she started worrying about high school, possibly failing high school, and never making it to college. The more she worries about high school, it becomes increasingly difficult for her to focus and complete assignments. As a result, her grades are declining.

Both of these students are examples of a child with an anxiety disorder - fear of the unknown. There are many anxiety-related fears. Those that present themselves in the classroom are generally fear of reading, fear of being called upon to answer a question or participate in a group, and fear of being noticed or embarrassed. Some signs of classroom anxiety that children may exhibit are never

volunteering to answer, assignments full of eraser marks and missing information, and often leaving the classroom with physical symptoms such as stomach ache, headache, vomiting, blushing, dry mouth, rapid heartbeat and breathing, sweating, chills, numbness, irritability, and anger. Classroom anxiety can result in poor school attendance and failing grades. Anxiety disorders are the most common disorder in childhood and adolescence.

Anxiety in the classroom can be reduced with teachers, school counselors, and parents working together, experimenting with modifications and interventions to help the child overcome his or her anxiety. With the proper support, these children can be helped to overcome their anxiety and become self-confident, engaged, and happy members of the classroom.

Positive behavior interventions and support cover a broad range of practices, strategies, and interventions. Educators can identify the problem areas and introduce more positive behaviors that can be implemented school-wide in the form of universal interventions. Interventions will benefit both students and staff by creating a more relaxed atmosphere.

*Valley House*

*(Continued on page 20)*

# NOT IMPOSSIBLE ... I'MPOSSIBLE

by Sandy Stocklin Hook

**F**or the past five months, 27 committed and motivated individuals have learned how to be self-advocates, leaders, and to empower themselves and others. They are the dedicated members of Year 21 of South Dakota Partners in Policymaking. The class has chosen their graduation theme: **NOT IMPOSSIBLE ... I'MPOSSIBLE.**

## December Training

Katherine (KD) Munson of Pierre and Brenda Smith, Sioux Falls, Year 5, introduced the class to Person Centered Thinking, one-page profiles, focusing on the person, relationship maps, and much more. Each participant developed their own map, learning what is important to them and what is important for them.

John Hamilton, Sioux Falls, SDAS Legal Affairs Director, spoke to parents and family members about IDEA - "What are my rights and how do I get what my child needs?" He also told them how they can be a Superhero for their child's education and explained how the concepts also apply to parents, self-advocates, and guardians seeking services from adult service agencies. "One must speak up, as you are your child's best, and often only, advocate at IEP meetings. Silence is NOT golden."

Employment - how do I look for a job? What is a resume? What do I wear or say at an interview? These and other questions were answered in a session by Dan Ahlers of Dell Rapids. Ahlers is a small business owner and he discussed the finer points of a resume. He also expanded on "don't take a job just because;" make sure



**Participants (l-r) Estan Douville, Max Merchen, and Erin Gustaf providing testimony before the Mock Hearing Panel**

it is a job you want, it fits your skills, and it is something you will be happy doing. He explained that job-searching is not easy and you will give out many more resumes and fill out many more applications than you will have interviews. "But don't let that discourage you, it is all part of the job search process for everyone."

Robert Kean, Executive Director of SDAS, and Tim Neyhart, PADD Program Director (both of Pierre), spoke on establishing effective partnerships, making informed choices, setting personal goals, developing communication skills, and exercising your rights. They discussed the foundation needed to building partnerships: equality; shared responsibility; mutual growth; goal setting; time limited; and contractual agreement.

Self-Advocates for Change (Kevin Moulton, Year 17, and Nancy Weiss, Year 18, Rapid City) detailed the importance of being your own advocate. They touched on joining advocacy groups, being an active part of your community, and knowing what you want and need to be successful. They were assisted by Arlene Poncelet of Pierre, Executive Director for the SD Council on Developmental Disabilities.

Dr. Patrick Schwarz, Skokie, IL, provided valuable insight and actual experience for successful inclusion in education. Schwarz stressed how successful school inclusion leads to successful community inclusion. "Start as early as possible for a successful future." He highlighted the 12 components of inclusion: attending neighborhood school; have a general edu-

cation homeroom; avoiding all instances of segregation; planning-planning-planning; solving problems; using innovative, diverse learning strategies; making all team members equal; doing away with unnecessary supervision, assistance, and learned helplessness; seeing behavior as a form of communication; using the whole educational bag of tricks; providing access to afterschool clubs and activities; and being committed to make it work.



**Jacque Brown and Bobbie Lynn Muilenburg with Governor Daugaard**

Neyhart discussed transition and how it is never too early to start thinking about it and talking to your child about what he/she wants. He stressed including students in all IEP meetings on transition services.

***Partners in Policymaking***  
***(Continued on page 19)***



**Participants Edward and Timothy Kopp with Governor Daugaard**



## Partners in Policymaking

(Continued from page 18)

### January Training

David Hancox, a lobbyist from Golden Valley, MN, spoke of the legislative process. "Don't be afraid to talk to your legislators. They are regular people, they are your neighbors ... and always remember they work for you." He explained how constituents are a resource to legislators on all levels. "What you bring to the table is important." He shared pointers on effective testimony and above all to always tell the truth. "If you don't know the answer to a question, don't fake it; admit you don't know and offer to find the answer."

Participants used their newly-acquired skills by providing mock testimony on current bills before the SD Legislature. Helping as bill coaches were Tom Scheinost, Dennis Hook, Poncelet, Neyhart, Dan Rounds, Gail Eichstadt, Chris Houlette, and Shelly Pfaff, all of Pierre. The mock testimony panel included Senator Mike Vehle, Mitchell, District 20; and Representatives Paula Hawks, Hartford, District 9, and Jacqueline Sly, Rapid City, District 31. Lt. Governor, Matt Michels, Yankton, chaired the panel. The class viewed both Houses in action and met with Gov. Dennis Daugaard for a picture.

Kean and Pfaff (South Dakota Coalition of Citizens with Disabilities), presented information on the Americans with Disabilities Act (ADA). Kean also demonstrated using the internet to follow the SD Legislature and bills being considered.

### February/March Training

The February and March sessions were combined due to weather. Continuing with the governmental theme, this session



Participants (l-r) Travis Red Blanket, Kevin Hinnners, and Jon Vavruska providing testimony before the Mock Hearing Panel

opened with a panel comprised of representatives from city (Mayor Laurie Gill - Pierre), county (Kevin Hipple - County Administrator from Hughes County), school (Cari Leidholt - member of Pierre School Board), and tribal (Stacey LaCompte - Ft. Pierre and Year 1 graduate). Each described similarities and differences in their governmental bodies and how individuals can be placed on the agenda and be heard.

Kean and Neyhart presented on Social Security - who qualifies and why, and what happens if you return to work.

Jim Kellar of Freeman spoke about the "Talking Circle" and the importance of listening and hearing. "Many people listen, but do they really hear." The Talking Circle teaches individuals to really hear what someone else is saying, not just head nodding. Each participant is given the talking piece and that is the only time that person can speak. Other members of the circle must listen and hear without passing

judgment or interruption. Kellar also spoke about meetings, meeting management, and the importance of being in control, but not aggressive. "To succeed you must work as a team, not an individual. If you want to change attitudes, you need to listen to all ideas, summarize what you hear, and get everyone involved."

Making his 14<sup>th</sup> trip to present at Partners in Policymaking was Dr. Wayne Duehn of Arlington, TX. Dr. Duehn described how to detect abuse and neglect, both physical and sexual. He discussed where, how, and to whom it should be reported, the profile of the perpetrator, and how abuse and neglect occurs everywhere, "yes, even in South Dakota." He went on to say, "Sexual and physical abuse of our elderly, children, and individuals with disabilities is on the rise and you need to know the signs and how to stop it." He also provided an overview on human sexuality issues, including suggestions of what and how to educate young children of all abilities the importance of "it is your body and it is private." He explained, "No is no and teach your children to say NO."

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

The sixth and final session will be held April 26-27, 2013, at the Ramkota Hotel in Sioux Falls. The weekend includes continuing education, Common Grounds, and the graduation banquet and ceremony.



Participants (l-r) Jason Bruns, Amethyst Schwender, and Charlotte Walking Eagle providing testimony to the Mock Hearing Panel



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## **CHANGE SERVICE REQUESTED**

### ***Valley House***

***(Continued from page 17)***

standing they will need to move if their beds are needed. In other words, they use these beds like swing beds. The admissions team for the Valley House consists of the Director of Nursing, Case Manager, Program Coordinator, Residential Manager, Vocational Manager, and Shelly Graham, Director of Program Services.

While the 24/7 nursing care is available only at Valley House, DakotAbilities also provides nursing care as needed to individuals who live in its other residential settings. For example, DakotAbilities has 24 people who use Baclofen pumps. Baclofen pumps are used to decrease spasticity related to spinal cord injuries or other neurological diseases. Spasticity is a muscle condition characterized by tight or stiff muscles that may interfere with voluntary muscle movements. The programmable pump stores and releases prescribed amounts of medicine from the pump reservoir through a catheter. Using an external programmer, the treatment team can make adjustments in the dose, rate, and timing of the medication.

People with the Baclofen pump most generally need to return to their doctor's

office for pump refills and medication adjustments. DakotAbilities has trained its nurses to remove and insert the catheters, as well as refill the Baclofen pumps as needed on-site. This saves valuable time and is much more comfortable for the individual. The only physician in South Dakota who changes the Baclofen Pumps is located in Sioux Falls.

While many people come to DakotAbilities to tour and view available services, the DakotAbilities admissions team is also willing to visit people where they live. In other words, the admissions team may visit the individual in a hospital, nursing home, or another CSP.

## ***Calendar***

- ♦ **May 3, 2013** - SDAS Public Listening Session, lunch, 11:00 a.m. - 1:30 p.m., Brother Renea Hall, Oglala
- ♦ **May 7, 2013** - Standing Rock VR Program Listening Session, 11:00 a.m. - 2:00 p.m., Grand River Casino, Mobridge
- ♦ **June 5-6, 2013** - YAMWI Conference, Mount Marty College, Yankton
- ♦ **June 23-24, 2013** - Lighting the Way/Autism Spectrum Conference, Sioux Falls
- ♦ **September 13-14, 2013** - SDAS Annual Board of Directors Meeting, Pierre

Any CSP could make a choice to provide supports similar to the Valley House. As with any HCBS services, eligibility requirements must be met and funding must be available. Shelly Graham feels the staff at DakotAbilities has had positive exposures to more people with unique medical conditions as a result of the services provided at Valley House and, as a result, feels that DakotAbilities' learning curve is higher when accepting new admissions. For further information about any part of this article, please feel free to contact Shelly Graham at DakotAbilities at (605) 334-4220 or the Division of Developmental Disabilities at (605) 773-3438.