Voting Continues to Evolve in SD

by Robert J. Kean

South Dakotans like to vote. This is clearly evidenced by the high turnout rate of registered voters at general elections. With the recent exception of a surprisingly low turnout of 62.27% for the 2010 general election, historically the turnout is usually in the 70th percentile range (2012-69.72%; 2008-73.02%). The popularity of candidates, whether the office is being contested, voting as a social/community event, and weather are some of the factors impacting the rate of voter turnout. However, there are also other, perhaps not so evident, factors that are having a positive impact on maintaining a large voter turnout. Several factors are a result of federal legislation passed in response to the issues surrounding the 2000 general election. Since it was signed into law by President Bush on October 29, 2002, the Help America Vote Act (HAVA) has created a tremendous amount of attention on all aspects of the voting process, from voter registration to the actual act of voting at the polling place.

In South Dakota, the Secretary of State’s office has the overall responsibility for the implementation of HAVA. The conduct of elections is the responsibility of the County Auditor. Early efforts in implementing HAVA included a focused effort on issues such as accessibility to polling places and using machines to mark ballots to ensure that persons with disabilities have equal access to the voting booth and are not discriminated against in exercising their right to vote. The Secretary of State’s Office and County Auditors throughout the state have been very diligent in making the voting process transparent and equally available to every South Dakotan.

With a continued focus on the process, voting continues to evolve in the state. In 2011, the “Vote Center” model was introduced to enhance flexibility in voting. E-Poll Books, used to facilitate the Vote Center model, also began to be used. Secretary of State, Jason Gant, who introduced the Vote Center and E-Poll Book concept, was invited to share some comments. He submitted the following:

Vote Centers

The Vote Center model was established in response to implementing the

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new requirements of the 2002 Help America Vote Act (HAVA). Vote Centers were first used in Colorado in 2003 before beginning to spread across the country. South Dakota first used Vote Centers for the 2011 Sioux Falls School District election. Currently, six counties in South Dakota use Vote Centers, and more will follow for the 2014 primary and general elections.

**What is a Vote Center?**

Vote Centers replace precinct-based voting and are becoming the standard for voting nationwide. Vote Centers allow residents to cast ballots at any voting location within a voting jurisdiction, whereas precinct-based voting limits voters to voting at a specific polling place based on where they live. The Vote Center concept brings accessibility to the elections system in response to an increasingly mobile society.

While there are many benefits associated with Vote Centers, two of the greatest advantages are providing voters with maximum flexibility and convenience, while also reducing election costs.

**Convenience to Voters:**

The Vote Center model gives voters more flexibility on Election Day because they are not constrained to a specific polling location. Voters have the convenience of going to any Vote Center to cast a ballot that contains every race and issue on which he or she is entitled to vote. Voters can choose to vote near their home, workplace, or anywhere else they find convenient. Also, if voters moved recently within the county, they can cast their correct ballot style close to their new home without having to drive across town to their old precinct polling place. A voter living in the south end of town no longer has to rush home after work to find his/her local polling place. Simply stated: With Vote Centers, there is no wrong place to vote.

**Election Cost-Savings:**

In addition to being more convenient to voters, Vote Centers also benefit election officials by greatly reducing election costs. Vote Centers cut down on the number of voting locations and equipment, as well as the number of poll workers.

**Example: Sioux Falls School District:**

A report on the implementation of Vote Centers found it cost almost $40,000 less than the 2010 precinct-based school district election. In 2011, 10 Vote Centers were needed compared with 59 polling locations in 2010, reducing mileage costs associated with delivering supplies and eliminating rent entirely, because all 10 locations were district buildings.

The most significant savings, though, came from the reduction in the number of poll workers. In 2010, 262 poll workers were hired at a cost of nearly $28,000. In 2011, 72 Vote Center poll workers were needed to staff the centers at a cost of just under $9,000 — one third of that in 2010.

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"Naww ... We Don't Need To Write That In The IEP"

by Valorie Ahrendt

The IEP Team members sat around the table as we discussed the student's strengths, weaknesses, goals, and needs. I was impressed with the discussion, as everyone seemed to be in agreement with what services and supports this particular student needed in order to make progress in his educational program. The last topic to discuss was the school bus, which was a concern the last time the team met.

"How has his behavior been on the bus?" I asked.

"Oh, his behavior has improved greatly since we placed an aide on the bus to sit with him," said the principal.

"OK, we should write in the Individual Education Plan (IEP) that he has the support of a bus aide," I said.

"Naww ... We don't need to write that in the IEP. We'll provide that to him anyway," the principal said proudly.

The look on my face must have shown my confusion, as she asked if I had heard what she said.

"I heard what you said, but I am confused as to why we wouldn't write that in his IEP. What I hear you saying is that with the support of the bus aide, he is doing well on the bus rides. Without the aide, his behaviors were out-of-control and almost daily you were calling the parents to come and pick him up because his aggressive behaviors posed a danger to everyone else on the bus. Obviously, this is a support that the student needs in order to be transported to and from school so that he can benefit from his education. Help me understand why it wouldn't be written in his IEP?"

This was not the first time I experienced this situation. Over the years, I have found that school districts are doing wonderful things for their students in order to help them succeed. However, a lot of these supports and services are not being included in the IEP documents. The districts know they will provide students with what they need anyway, so they feel they don't need to write it in the IEP document. While school districts may be providing their students with assistance that goes above and beyond what the child's IEP states, it is best to document in the IEP all of the extra things the student is receiving.

The Individuals with Disabilities Education Act (IDEA) is a federal law requiring all eligible children with disabilities to receive a free appropriate public education. The IEP is a legal document that is basically an "instruction manual" of what services and supports the child needs in order to make progress in the educational environment and how the services and supports will be provided to that child. The IEP is a document that will remain with the child if that child moves to a different school within the same school district or even moves to a different school district altogether.

Another situation involved an eighth grade student on an IEP who moved to a neighboring state. The new school district began providing the services and supports listed in her IEP. Two months later, the parent received information from the school that her daughter was failing five out of the six classes she was taking and was having major meltdowns at least three times a week. What the new school staff did not know was that the teachers in her previous school allowed her to take a break and leave the classroom when they noticed she was getting frustrated and about to become upset. She would walk to the office and visit with the counselor about what was bothering her. Once she was calm, she would return to class and finish her work. The teachers also knew she was usually distracted and allowed her to go to a quiet room to take tests. Even though these supports were provided by her teachers, they were not included in her IEP. Had the new school known this information if it had been included in her IEP, the staff from the new school would have been able to provide the supports this student needed in order to for her have educational success.

"Naww"

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Yankton NDEAM Committee and SD NAMI Collaborate Events in Yankton

by Irma Ahrens

An event co-celebrating National Disabilities Employment Awareness Month (NDEAM) and Mental Illness Awareness Week was held at Mt. Marty College on October 7, 2013. The Yankton area NDEAM committee and the local National Alliance on Mental Illness (NAMI) chapter coordinated efforts to provide an evening of awareness and celebration, promoting this year’s NDEAM theme - “Because We Are EQUAL to the Task.”

Always an important part of the NDEAM celebration is the presentation of the Pat Smith Employee of the Year and Outstanding Employer of the Year awards. Once again, Yankton Mayor, Nancy Wenande, presented the awards. The 2013 Employee of the Year was Shanel Kube. Kube began working at Pizza Hut in 2008 with the help of a job coach through Ability Building Services. She started out with minimal duties, but learned quickly and now works five days a week and no longer needs a job coach. According to her nominator for this honor, “There is a good working relationship between Shanel and her boss, Sarah, and the rest of the managerial team. They enjoy her quiet demeanor and quick smile, as well as her ability to take direction well and do whatever is asked of her with a good attitude. She has brought a lot of positive qualities to her job.”

Burger King was this year’s winner of the Outstanding Employer of the Year award. Rhonda Taggart, local manager, accepted the award on its behalf. According to the nomination submitted by Connie Schupbach, Employment Coordinator at Lewis & Clark Behavioral Health Services (L&C BHS), “With an eye for helping people realize their vocational goal, Burger King has also been willing to provide Rehabilitation Services opportunities for evaluating workers and work with job coaching and follow-along support to assure successful job placements.

When employees receive and wear the company uniform, it is done with pride. The expectations are the same as for all employees – be on time and reliable, smile and greet customers, focus on getting the job done, work as a team member, and enjoy inclusion in all workplace activities.”

Following the awards presentation, South Dakota NAMI observed Mental Illness Awareness Week by having a candlelight vigil. All participants received pen lights, which were raised as Pastor Dani Jo Ninke of Christ the King Lutheran Church read a piece from a blog by Ann Voskamp, “What We Want the Church to Know About Mental Illness.” Ann and her mother battle mental illness and the piece described the pain of mental illness, which may be compounded by stigma and insensitivity. The lights shone brightly with awareness and hope in the darkened auditorium.

The highlight of the evening was the presentation, “Handicap This!” by Mike Berkson and Tim Wambach. The duo used humor to promote disability awareness and inspire others. Berkson, who was born with cerebral palsy, and Wambach, who was assigned as Berkson’s one-on-one aide in school when Berkson was 12 years old, have traveled throughout the United States these past four years sharing their story. Since Berkson utilizes a wheelchair for mobility and has very limited use of his arms, legs, and torso, as well as affected speech, most people make incorrect assumptions according to the duo. They want people to see Berkson as the person he really is and not stereotype him because of his disability. According to Wambach, “Ultimately, the goal of the show is to shine a mirror on each one of the audience members. We want them to do more with what they have, see how they can help others, help themselves, and make the most out of their own lives.”

Sponsors for this year’s event included the Division of Rehabilitation Services, Service to the Blind and Visually Impaired, Board of Vocational Re-

Award Winners, Speakers, and Committee Members at the October 7 Yankton NDEAM / SD NAMI event

NDEAM / SD NAMI
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Tech Bytes
by Valorie Ahrendt

This edition of the South Dakota Report highlights three apps. [These reviews are for informational purposes only. No compensation is received and no apps/products reviewed are guaranteed to work for individual situations. What may work for some may not work for all.]

Sign 4 Me — A Signed English Translator
By Veom3D

$9.99 from iTunes

Compatible with iPhone, iPad, and iPod touch

Sign 4 Me is a sign language app that features a 3D Avatar character who provides sign language instruction. A team of eight professionals who are deaf helped to build an accurate sign library of 11,500 words. The app includes controls to speed up or slow down the signing, zoom in or out, and rotate to get the best vantage point for every sign. A demonstration video of this app can be found at http://signingapp.com.

Living Safely
By AbleLink Technologies, Inc.

$29.99 from iTunes

Compatible with iPad

Living Safely is an app for anyone who needs support with understanding important safety skills necessary for daily living. The app provides a simple, self-directed learning session for 27 safety skill topics. It allows a person to work at his or her own pace. Examples of Home Safety topic areas include: Fire Safety; Strangers At Home Safety; Medicine Cabinet Safety; Bathroom Safety; Putting Food Away/Doing Dishes Safety; and Electrical Safety. Examples of Personal Safety topic areas are: Cold Weather Safety; Relationship Safety; Getting Lost; Work Safety; and Pedestrian Safety.

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Tech Bytes
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iTalk Recorder
By Griffin Technology

Free from iTunes
Compatible with iPhone, iPad, and iPod Touch

iTalk Recorder is a very simple tool for audio recording. Press the big red button to start and then again to stop. It is easy to record and play back reminders, directions, or instructions. The iTalk Recorder also can assist with relaying information to support providers, family members, employers, and people in the community.

Vote Centers
(Continued from page 2)

E-Poll Books:

Electronic poll books and Vote Centers go hand-in-hand. The electronic poll book is integral to the success of the Vote Center model. Because voters can go to any Vote Center, the electronic check-in system is linked across all Vote Centers. Vote Centers are connected through secure internet connections, and as ballots are cast, all e-poll books are instantaneously updated.

The electronic poll book serves the same function as a paper poll book, providing each Vote Center with a list of registered voters eligible to vote at that location. However, an electronic version of the poll book has the additional benefits of being more time efficient and less prone to human error, and providing quick and easy access to every voter’s registration information from the county, not just those voters from one precinct.

Benefits of e-poll books:
- A poll worker can quickly determine the registration status of any voter in the entire county.
- All Vote Centers can be connected in real time to eliminate the possibility of persons voting twice.
- Voter look-up speed and accuracy is greatly enhanced (which cuts down on the time that voters spend waiting in line to vote).
- Poll workers can check-in voters with a quick scan of a driver’s license (no more A–L and M–Z lines).
- No more costly small-print, voluminous paper poll books.

Conclusion:

Both voters and election officials benefit from the convenience of Vote Centers. South Dakota has already successfully implemented Vote Centers for both statewide and municipal elections in Yankton, Potter, Hyde, Sully, and Brookings counties, as well as the City of Sioux Falls. There has been positive response from voters and election workers, and more counties plan to start using Vote Centers and e-poll books within the next several years. Our (Secretary of State) office will continue our support and also work with other interested counties to bring Vote Centers across South Dakota, for both the 2014 election year and beyond.

“Naww”
(Continued from page 3)

Many school districts have the students’ best educational interest in mind and provide supports above and beyond what is stated in the IEP. Teachers get to know the students over time and also know the additional supports students need in order to manage their emotions and complete their academic work. The students benefit from this extra support and all is well until the student moves to another school or the information is not passed on to the next year teachers. As demonstrated in the above scenario, there are potential problems with the practice of providing services and supports to a student, but not including them in the IEP. It helps the student and new staff if the IEP contains all the services the student needs. For the benefit of all involved, all services and supports provided to students, in order for them to benefit from their education, should be written into the IEP.
Parent Participation Under IDEA
When Can IEP Teams Meet without Parents?

by John A. Hamilton

Parents, raise your hand if:
- Your school district held an IEP Team meeting without you because you could not attend on the date it was scheduled?
- Your school district told you it could not reschedule an IEP Team meeting to fit your schedule?
- Your school district told you the IEP Team meeting could not be rescheduled because the meeting had to be held no later than the annual review date (one year after the prior annual IEP), and if you could not attend, the team would have to meet without you?

School personnel, raise your hand if:
- You were part of an IEP Team meeting held without a parent present because the parent was ill or could not get off work?
- You told a parent you would not reschedule an IEP Team meeting to a date that works better for the parents?
- You told a parent, “This is the only time the IEP Team can meet because of staff availability?”
- You told a parent the IEP Team would have to meet without the parent if the parent could not attend prior to the annual review date?

IDEA requires parents to be an equal member of their child with a disability’s IEP Team and be afforded the opportunity to participate in all decisions involving identification, evaluations, IEP development, and placement of the child. There may not be agreement or understanding, however, as to the efforts districts must make to comply with this requirement. This article will review IDEA’s “parent participation” mandates, discuss a recent federal court case interpreting those requirements, and provide analysis.

Regulatory Language

The IDEA and its regulations address what a district must do to ensure parent participation. School districts are responsible for taking steps to ensure one or both parents are present at each IEP Team meeting or are afforded the opportunity to participate, including: "(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed upon time and place.” 34 C.F.R. § 300.322(a). The Meeting Notice must include the purpose, time, and location of the meeting, as well as who will be in attendance. This section also contains requirements for inviting the student and participating agencies when transition services will be addressed. 34 C.F.R. §300.322(b). If neither parent can attend in person, districts must use other methods to ensure parent participation, such as individual or conference telephone calls. 34 C.F.R. § 300.322(c). Video conferencing is another option if available.

Parent participation also means that parents must be able to understand the proceedings of the IEP Team meeting. Districts must take steps to ensure this occurs, such as providing for an interpreter for parents who are deaf or whose native language is other than English. 34 C.F.R. § 300.322(e).

Some parents, for whatever reason, may choose not to participate in their child’s IEP Team meetings, so they simply ignore the Meeting Notice. In this situation, districts can hold IEP Team meetings without parents in attendance, but must take specific steps before doing so. “A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parents’ home or place of employment and the results of those visits.” 34 C.F.R. § 300.322(d).

IDEA contains a number of procedural safeguards. At a Due Process Hearing, IDEA instructs that a hearing officer’s determination of whether a child received a free appropriate public education (FAPE) must be based on substantive grounds. 34 C.F.R. §300.513(a)(1). Where parents allege a procedural violation, a hearing officer may find a denial of FAPE in only three circumstances: If the procedural inadequacies 1) impeded the child’s right to a FAPE; 2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or 3) caused a deprivation of educational benefit. 34 C.F.R. §300.513(a)(2).

Regulatory Analysis

When discussing parental participation, the ultimate question, should the situation go before a hearing officer, is whether the district’s actions “significantly impeded the parent’s opportunity to participate.” For that reason, districts must take affirmative measures to attempt to ensure that participation. As §300.322(d) demonstrates, if a district sends parents a Meeting Notice and the parents simply do not show up for an IEP Team meeting, the team cannot meet without the parents. In other words, simply sending out a Meeting Notice is not sufficient. In order for an IEP Team to meet without the parents, the district must have detailed records of its attempts to convince the parents to attend and to arrange a mutually agreed on time and place. IDEA provides specific examples of steps districts must take. The detail provided in this section demonstrates the importance Congress placed on parental participation. IDEA refers to “detailed records” of telephone calls made or attempted, copies
of correspondence, and again “detailed records” of visits to the parents’ home or office, as well as “detailed records” of the results of those calls, correspondence, and/or personal visits.

The obvious question is whether districts must try once, twice, or all three types of contacts to convince unresponsive parents to participate? The regulation uses “and” to connect the three types of contacts, as opposed to “or,” so it is clear the intent is not for districts to “try one and be done.” For example, if a district calls and leaves a message on the parents’ answering machine, is that enough? What if the district also mails the Meeting Notice? If the district receives no response, has it done enough to meet the “attempts to convince the parents to attend and arrange a mutually agreed upon time and place” standard, which would allow the IEP Team to meet without the parents? Let’s assume one of the kids deleted the phone message and the parents never received the mail (which does seem to happen more frequently with school district mail than all other mail). The point is, it would be difficult for a district to claim it sufficiently encouraged parents to participate and arranged a mutually agreed upon time and place when no actual discussion took place and the parents provided no response. More calls or a personal visit may be required in order to comply with the federal regulation. If the parents remain unresponsive, at some point the district will need to determine its efforts and documentation are sufficient and the IEP Team meeting can proceed without them. Like all aspects of IDEA, individual circumstances will dictate districts’ efforts.

How is a district to respond when a parent answers the phone and flat-out refuses to attend? Do the same requirements for additional attempts to convince the parents to attend apply when a parent says “no,” or has the district satisfied its responsibility? It may be best for a district to not “rush to judgment.” For example, assume the parents fail to show up for a scheduled IEP Team meeting, which results in the meeting being postponed. The district calls the parents, who inform the district they will not/attend a rescheduled meeting. Has the district done enough, or must the district continue to attempt to convince the parents to attend through additional phone calls, correspondence, and/or personal visits to the home or work place? From the district’s perspective, it seems to be a question of ensuring “no” means “no” for purposes of this regulation. Does the parent have a history of not participating in IEP Team meetings? Is this a “new” parent who does not really understand her rights and the IEP Team process (did she even understand what she said “no” to)? Is the parent refusing because he cannot get off work during the time the district typically holds meetings, but would actually want to attend? The law is clear that the IEP Team can meet without parents when they refuse to attend, but individual circumstances dictate that districts must make sure that parents actually do not want to participate before meeting without them.

Whether a parent is unresponsive or affirmatively refuses to attend, districts should err on the side of caution. To cover itself, at the point a district believes a parent is “unresponsive” or “no means no,” it should follow-up with a letter to the parents acknowledging the parents’ failure to respond or decision not to participate in the IEP Team meeting and stating the IEP Team will be meeting without the parents. Of course, districts must continue to provide parents with a Meeting Notice a reasonable time prior to the meeting regardless of whether the district believes the parents will attend.

**Doug C. v. State of Hawaii Dept. of Educ.**

The above regulations were put to the test in a recent case before the Ninth Circuit Court of Appeals. *Doug C. v. State of Hawaii Department of Education*, 720 F.3d 1038 (9th Cir. 2013). The issue was whether the district’s efforts to include the parent in an IEP Team meeting were sufficient under IDEA.

Spencer is now an 18-year-old student with autism. Since fifth grade, his IEP Team placed him at a private education facility called Horizons Academy. In September 2010, when Spencer was fifteen, the school and his father, Doug C., began discussing his upcoming annual IEP Team meeting. The special education director, Kaleo Waiitu, testified at a due process hearing that all members agreed the meeting would be October 28, 2010. Doug C. testified he thought they had agreed, tentatively, on late October. Waiitu called Doug C. on October 22 to confirm the October 28 date. Doug C. informed him he was unavailable that day. They agreed to have the meeting November 4 or 5, 2010. Doug C. testified those dates were also tentative, as he had to check his calendar. The following day, Doug C. called Mr. Waiitu to let him know he was not available. They agreed the meeting would be November 9, 2010. *Id.* at 1041.

On the morning of November 9, Doug C. emailed Waiitu at 7:27 a.m., explaining that he was ill and therefore unable to attend the IEP Team meeting. Doug C. suggested rescheduling for November 16 or 17. The annual review deadline for the IEP was Saturday, November 13. Waiitu stated some of the team was not available November 12, so he offered to reschedule for Wednesday, November 10, or Thursday, November 11, 2010. Doug C. responded that he could possibly participate on those dates, but could not commit to either day because he may not be recovered from his illness. Waiitu suggested that Doug C. could participate via phone or Internet that day (November 9), but Doug C. stated he wanted to be physically present and did not feel physically well enough to participate meaningfully through any means that day. *Id.* at 1042.

Because Doug C. could not firmly commit to November 10 or 11, Mr. Waiitu refused to reschedule the meeting and went forward with the meeting as scheduled on November 9, 2010. At hearing, he testified he had already asked “13 people on three separate occasions to change their schedules and cancel other commitments.” Not only did Doug C. not participate, but no one from Horizons Academy attended either. The IEP Team changed Spencer’s placement to the Workplace Readiness Program at Maui High School. Waiitu sent Doug C. the completed IEP to review. The IEP Team met again on December 7, 2010, with Doug C. and Horizons Academy personnel in attendance. Waiitu claimed the team reviewed the IEP line-by-line and Doug C. provided no input. Doug C. explained he rejected the IEP in its entirety because he was excluded from its development. *Id.*

Doug C. filed for a due process hearing the day prior to the December 7 meeting, arguing the lack of parental participation in the IEP Team meeting denied Spencer a FAPE. The hearing **Parent Participation**

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Parental Participation
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officer ruled the Department did not deny Spencer a FAPE. Doug C. appealed to federal district court, which affirmed, finding that Doug C. “failed to show the Department did not fulfill its statutory duty to ensure that Doug was afforded an opportunity to participate at the November 9, 2010 IEP meeting.” Doug C. appealed to the Ninth Circuit Court of Appeals. Id.

In analyzing this case, the Ninth circuit initially referenced the language of Board of Education v. Rowley, 458 U.S. 176, 205-06 (1982), where the United States Supreme Court held that in analyzing whether an agency has provided a student a FAPE, first the court must consider whether the state has complied with the procedures in the Act, and second whether the IEP in question is reasonably calculated to enable the child to receive educational benefits. The Ninth Circuit noted that harmless procedural errors do not constitute a denial of FAPE, but procedural errors that result in the loss of educational opportunity or seriously infringe on the parents’ opportunity to participate in the IEP formulation process clearly result in a denial of FAPE. The court also referenced the Rowley Court’s belief that Congress placed as much emphasis on complying with the procedures giving parents and guardians a large amount of participation as it did upon the resulting IEP. Id. at 1043.

The court referenced past Ninth Circuit decisions ruling procedural violations that interfere with parental participation undermine the very essence of IDEA. “We have explained that parental participation is key to the operation of the IDEA for two reasons: ‘Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.’” After reviewing the regulations discussed above in this article, the court referenced an additional Ninth Circuit decision. “In Shapiro v. Paradise Valley Unified School District, 317 F.3d 1072 (9th Cir. 2003), superseded on other grounds by 20 U.S.C. §1414(d)(1)(B)), we clarified the limited circumstances under which a public agency can hold an IEP meeting without parental participation. 317 F.3d at 1078. We held that parental involvement in the “creation process” requires the [agency] to include the [parents in an IEP meeting] unless they affirmatively refused to attend.” Id. (emphasis added).” Id. at 1044 (initial brackets added).

Looking at the facts of the case, the court initially noted that Doug C. did not “affirmatively refuse to attend the meeting,” nor was the Department “unable to convince” him to attend. Rather, Doug C. “vigorously objected to the Department holding an IEP meeting without him and asked the Department to reschedule the meeting for the following week.” While the Department offered to reschedule for either of the following two days, Doug C. agreed to try to attend, but could not commit due to his illness. Despite Doug C.’s objections, the Department went forward with the meeting and changed Spencer’s placement for the first time in six years. The court found the Department’s actions inconsistent with its standard set out in Shapiro. Id.

The court then addressed the Department’s arguments. The Department argued Doug C. was difficult to work with and made its frustration known. The court acknowledged that while it may be frustrating to schedule meetings or to work with Doug C., that “does not excuse the Department’s failure to include him in Spencer’s IEP meeting when he expressed a willingness to participate.” The court cited to several cases holding districts cannot excuse their failure to comply with IDEA’s procedural safeguards by blaming the parents. “An agency cannot blame a parent for its failure to ensure meaningful procedural compliance with the IDEA because the IDEA’s protections are designed to benefit the student, not the parent.” Id. at 1045. The court concluded, “Because the Department’s obligation is owed to the child, any alleged obstinence of Doug C. does not excuse the Department’s failure to fulfill its affirmative obligation to include Doug C. in the IEP meeting when he expressed a willingness (indeed eagerness) to participate, albeit at a later date.” Id.

The Department also apparently argued that Doug C.’s absence from the November 9 IEP Team meeting was of little consequence because Doug C. would have had very little to contribute to the discussion. The court responded: “The Department is in no position to question the value of Doug C.’s input. Congress already answered that question when it prioritized parental participation in the IEP process.” Id. at n. 5.

The Department’s main argument was that it could not accommodate Doug C.’s request to reschedule the following week because the annual IEP deadline was November 13. The court responded: “Even assuming that the annual deadline should somehow trump parental participation, the Department’s argument fails on the facts of this case. Waihau ... testified that he refused to reschedule for the Wednesday or Thursday before the deadline because Doug C. could not firmly commit to either of those dates because of his illness, even though Doug C. testified that he said that he likely could attend. Waihau explained that he did not wish to disrupt the other IEP’s members’ schedules without a firm commitment. This argument may seem reasonable but quickly unravels because, under IDEA, the attendance of Doug C., Spencer’s parent, must take priority over other members’ attendance for the reasons stated above.” Id. at 1045.

SDAS thanks outgoing Board Members (l-r) Viki Day, Patricia Ribe, and Julie Yellow Cloud for their time and efforts on behalf of SDAS. Day and Yellow Cloud each served on the Board of Directors for six years. Ribe served nine years, three as the PAIMI Advisory Council Chair and two regular terms, and was Board President for the past six years.

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The court noted how IDEA allows parents to excuse other IEP Team members, but districts cannot exclude parents. "In Shapiro, we clearly held that an agency cannot exclude a parent from an IEP meeting in order to 'prioritize[] its representatives' schedules.' ... By refusing to reschedule the meeting on Wednesday or Thursday, Wai'au improperly prioritized the schedules of other members of the team over the attendance of Doug C." The court added that Wai'au did not even offer Doug C. the option of meeting Friday before the annual review deadline because of other members' schedules. Id. "Once again, the Department improperly prioritized its own representatives' schedules and attendance over the attendance of the parent." Id. at 1046.

As to the Department's argument that the meeting could not be held after the annual review deadline, the court responded: "Even if the Department's theory of the case was supported by the facts, the Department's argument that it absolutely could not reschedule the IEP meeting for a date even a few days after the annual deadline in order to include Doug C. is untenable. Wai'au's testimony suggests, and the Department's counsel represented at oral argument, that if the annual deadline passed without a new IEP, services would "lapse." The district court took a similar position. We reject this argument because it is premised on the erroneous assumption that the Department is authorized (let alone required) to cease providing services to a student if his annual IEP review is overdue. The IDEA mandates annual review of a student's IEP. ... However, the Department cites no authority, nor could it, for the proposition that it cannot provide any services to a student whose annual review is overdue."

The court recognized that public agencies may run into situations where they are unable to meet two distinct procedural requirements, such as the situation before it. The court stated in considering this question, one must keep in mind the purposes of IDEA - to provide students with disabilities a FAPE and to protect the educational rights of those students. "When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in a denial of a FAPE." The court ruled that when the Department was faced with two options, include the parent in the meeting but miss the annual review deadline by several days, or proceed with the IEP Team meeting without the parent but meet the deadline, "the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable." Id.

The Department further argued there was no violation because the IEP Team met again on December 7, 2010, with Doug C. present. The court held that after-the-fact involvement by parents is not sufficient because IDEA requires parental involvement in the creation process. Furthermore, by December 7, the new IEP changing Spencer's placement had been completed and adopted. Id. at 1047.

While finding the procedural violation of failing to include Doug C. in the IEP Team meeting denied Spencer a FAPE, the court also ruled the procedural violation denied Spencer a FAPE for the separate reason of denial of educational opportunity. "A procedural error results in the denial of an educational opportunity where, absent the error, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."" The court found there to be a strong likelihood that the benefits of Horizons Academy, Doug C.'s preferred placement, would have been more thoroughly considered with Doug C. at the meeting. The court also found it "particularly likely" that the merits of Spencer's continued placement at Horizons Academy were not considered because the IEP Team member from Horizons Academy was also absent from the meeting. For these two reasons, the court held the Department denied Spencer a FAPE. Id.

The Ninth Circuit reversed and remanded the case to the district court. Doug C. had privately paid for Spencer's continued placement at Horizons Academy when he chose to contest the IEP. On remand, the Ninth Circuit directed the district court to determine whether Doug C. was entitled to reimbursement for his costs of maintaining Spencer at Horizons Academy, noting the district court must determine if the public placement violated IDEA and whether the private school was "proper" under the Act. The court acknowledged the initial question had been determined: "The public placement at the Workplace Readiness Program at Maui High School violated IDEA because the placement was the result of the November 9 IEP meeting." Hints strongly at how the lower court should rule, the court stated: "Where, as here, the private school selected by the parent is the same school that the child has previously attended for several years under IEPs that have been approved by all parties, we think it highly unlikely that the placement does not represent a 'proper' placement." Id. at 1048.

Analysis

While simple on its face - did the Hawaii Department of Education violate IDEA's parent participation requirement? - the court's decision addressed a number of issues as a result of the parties' arguments. In doing so, it was very clear that the court had little difficulty in finding the Department's arguments to be meritless and in reversing the district court decision. Indeed, by the time the court reviewed its prior decisions before its discussion of this particular case, it was pretty clear how the court would rule. It was also pretty clear, although the district court decision is not published, that the district court had ignored the Ninth Circuit precedent.

The Department's first argument was that the parent was difficult to work with and it was frustrating because the special education director had already made 13 people change their schedule three times. Actually, the facts show the original meeting had been rescheduled twice. The court essentially sent the message, "cry me a river," in explaining that districts cannot blame parents for their failure to comply with IDEA's procedural requirements. Districts have an affirmative obligation to include parents who express a willingness to attend.

Perhaps the most absurd argument to justify meeting without the parent was that Doug C. would have had very little to contribute. Now that is an interesting position - schools can prede-
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termine which parents will have little to contribute at an IEP Team meeting and can meet without them. While the court could have "read the Department the riot act," instead, it simply stated that it is not for the Department to decide because Congress prioritized parental participation. In doing so, the court was essentially saying, "Are you kidding me? It's the law."

When the Department attempted to justify meeting without Doug C. by arguing it had to meet by the annual review date and could not get a firm commitment from the ill father, the court initially readressed staff schedules. The court noted that even if "the annual review date should somehow trump parental participation," there were three more days the team could have met prior to the annual review date. The court held the Department cannot exclude a parent in order to "prioritize its own representatives' schedules," and parental participation must take precedence over other members' participation. The court's reference to how IDEA allows parents to excuse other IEP Team members, but districts cannot exclude parents, was illuminating in its understanding of the issue before it.

The most intriguing aspect of the Doug C. decision is the discussion and ruling on the "annual review date." Over the years, SDAS has certainly witnessed districts violating a number of IDEA requirements, such as prior written notice, IEP Team personnel, discipline procedures, etc., claiming they were minor procedural errors if challenged. Parents are allowed to waive their rights, such as the timeline for evaluations, the five-day requirement for prior written notice in South Dakota, and attendance of IEP Team members. There has always been a procedural requirement, however, that districts hold sacred and that parents are not allowed to waive. That golden calf is the annual review deadline. How many parents have been told one or more of the following?

♦ We have to meet by ___ because that is the annual review date.
♦ No, you cannot waive that date.
♦ No, we cannot meet next week when it fits into your schedule.
♦ We have to meet on this day because it is the only day staff are available before the IEP expires.
♦ If you cannot meet on that day, we will have to meet without you because the IEP expires and we do not want to be out of compliance.
♦ If you cannot attend on this date, the IEP will expire and we will not be able to provide services to your child.
♦ We cannot meet after that date because we do not want to get "dinged" by the state!

In Doug C., the Department's argument was that the IEP would "lapse," meaning the child would have to go without services. "The district court took a similar position." This was the only reference to the lower court's ruling in the entire decision. The court addressed the argument with another "are you kidding me?" response. The court pointed out there is nothing contained in IDEA that authorizes, let alone requires, districts to cease providing services. While IDEA requires annual review, the court, with a hint of sarcasm, stated, "However, the Department cites no authority, nor could it [because it does not exist], for the proposition that it cannot provide any services to a student whose annual review is overdue." (Emphasis and brackets added). The court did not stop there. Instead, it provided guidance for districts when confronted with situations where it could comply with one procedural safeguard or another, but not both. It directed districts to take a step back and look at the whole situation: "We hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE." In the case before it, continuing to provide services in the existing IEP beyond the annual review date was not going to result in a denial of FAPE, but failing to include a willing parent in the IEP development did denies the student FAPE.

The court acknowledged the facts of each situation will dictate the result. The court also recognized that "if a parent refuses to attend or is entirely unresponsive to the agency’s requests to meet, the agency has a duty to move forward with the IEP process." Id. at 1045, n. 6.

Another issue the court addressed was whether the Department could essentially correct its prior failure to include the parent by having a follow-up IEP Team meeting. The court's response was, "absolutely not!" Because parents are mandated team members in the creation of the IEP, districts cannot "fix it" by meeting later with the parent present after the IEP was created and adopted.

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PAIMI Advisory Council (l-r): Ellen Washenberger; David Larson; Shirley Begay; Kelly Bass; D'Este Chytka; Wanda Peacock; Monica Matt; Jill Furan; and Art Conners (not pictured Lori Eagle)
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Finally, it appears the court found an additional violation without input from the parties, that being a “denial of an educational opportunity.” The court determined that without Doug C. and the representative from Horizons Academy present at the November 9, 2010, IEP Team meeting, there was a “strong likelihood” the benefits of continued placement at Horizons Academy were not adequately considered, but would have been if they were present. It appears that the court added this violation to its decision because of what transpired at the IEP Team meeting – with the parent and Horizons Academy not present, the team conveniently changed Spencer’s placement for the first time in six years from Horizons Academy to an in-school program.

While the Doug C. decision provides legal precedent within the Ninth Circuit, it will be persuasive authority for the rest of the country. Despite IDEA approaching 40 years, there is very little caselaw beyond the administrative hearing level on this issue besides the Ninth Circuit cases cited in the Doug C. decision. Two others had similar outcomes.

In an unpublished decision, Drobnicki v. Poway Unified School District, 53 IDELR 210 (9th Cir. 2009), the district notified the parents of an IEP Team meeting on October 10, 2005, without first inquiring about their availability. The parents did not agree with the date and informed the district they were not sure they could attend. The district made no further attempts (further correspondence, phone calls, visits with the parents) to reach a mutually agreed upon time for the meeting, but did contact the mother the day of the meeting to offer participation via speakerphone. She asked to reschedule, but the district held the meeting October 10 without the parents. The district argued the parents’ right to participate was not significantly restricted because the mother attended meetings in September and December. However, the annual IEP was formulated at the October 10 meeting. The court held after-the-fact parental involvement was insufficient and the district’s failure to include the parents resulted in lost educational opportunity and a denial of FAPE. Similarly, in School District v. Horeen, 55 IDELR 102 (N.D. Ohio 2010), the district was found to deny the student a FAPE when it failed to reschedule an IEP Team meeting when the parents informed the district they could not attend and wished to reschedule, but the district held the meeting as originally scheduled without the parents.

Other Restrictions on Parental Participation

The fact that parents attend an IEP Team meeting does not guarantee they have actually been given the opportunity to participate as contemplated by IDEA. Districts have been found to deny a student FAPE by significantly restricting parental participation through:

- Presenting a pre-determined IEP (one not open for any changes);
- Failing to provide copies of evaluations prior to IEP Team meetings; and
- Failing to provide notice of the purpose of the meeting (where a district springs something at the meeting not contained in the Meeting Notice).

Conclusion

IDEA creates an affirmative obligation on the part of school districts to schedule IEP Team meetings at a mutually agreed upon time and place. Parental participation at IEP Team meetings – in all decisions concerning identification, evaluation, placement, and provision of a free appropriate public education – is a cornerstone of IDEA. A denial (or significant restriction) of parental participation is a substantive denial of a free appropriate public education. As the Doug C. decision points out, if parents want to participate but cannot meet when the meeting is scheduled, districts must reschedule at a time when the parents can meet, even if it means holding the meeting past the annual review date. If parents have concerns regarding their ability to participate in IEP Team meetings, please contact SDAS at 1-800-658-4782.

NDEAM / SD NAMI
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habilitation Services, Yankton Area Mental Wellness, Inc. (YAMWI), Board of Services to the Blind and Visually Impaired, State-Wide Independent Living Council, L&C BHS, NDEAM, NAMI, Yankton Middle School PTSA, and Healthy Yankton.

Members of the NDEAM committee come from various agencies in the Yankton community, including: SD Rehabilitation Services; SD Human Services Center; L&C BHS; Independent Living Choices; Ability Building Services; SD Advocacy Services; Southeast Job Link; SD Services to the Blind & Visually Impaired; NAMI; and Mt. Marty College.
RSA Directive Clarifying VR’s Responsibility to Pay for Graduate School

by Brian Gosch

It is clear under the law that Vocational Rehabilitation (VR) is responsible for paying for undergraduate tuition when such coursework comports with the consumer’s employment goal, and it is a viable option for the consumer. There has been some question, however, as to the extent VR is responsible for the payment of graduate studies. In the past, VR representatives argued that VR agencies had complied with the Rehabilitation Act if the agencies had provided services that allowed its clients to achieve “suitable employment,” which meant “entry level” positions or jobs. Therefore, VR would not have to pay for graduate school. In other words, if VR could demonstrate its client could successfully perform an “entry level” job in any profession or any “suitable job” as a result of a college degree, then VR would refuse to pay for additional schooling the VR client sought for a graduate degree so that the individual could get a job in the area of the individual’s choice.

The Rehabilitation Service Administration (RSA) issued a Policy Directive (RSA-PD-97-04, RSM-2035) on this specific topic, which makes it very clear that the old “Suitable Employment” standard is rescinded. Portions of it state:

Given the emphasis that the Act places on informed choice, DSUs [Designated State Units] must also ensure that the identified employment objective reflects the individual’s interests and informed choice to the extent that those factors are consistent with the individual’s strengths, resources, priorities, concerns, abilities, and capabilities. In other words, the employment objective identified in an individual’s IWRP should reflect the individual’s informed choice if the individual is not currently employed consistent with his or her primary employment factors, the individual possesses the strengths, resources, priorities, concerns, abilities, and capabilities needed for the employment goal, and such employment is available under current labor market conditions.

The cost or the extent of VR services that an eligible individual may need to achieve a particular employment goal should not be considered in identifying the goal in the individual’s IWRP. For example, the fact that an employment objective may require an advanced degree, whereas another may only require job retraining or placement assistance, should not affect the determination of an employment objective that is appropriate for the particular eligible individual. Once the employment goal is identified, however, cost becomes a relevant factor in determining an appropriate, cost efficient means of providing needed VR services. In this regard, DSUs are authorized to employ cost efficiency strategies that are consistent with federal law, such as financial needs tests, and also are obligated to locate available comparable services and benefits for certain VR services (34 CFR §361.53-361.54).

Finally, entry-level employment is an appropriate employment goal if the eligible individual is only capable of performing entry-level work or if the individual chooses an entry-level job as his or her employment goal.

The guidance provided through this Policy Directive is intended to correct the misperception that achievement of an employment goal under Title I of the Act can be equated with becoming employed at any job. As indicated above, the State VR Services program is not intended solely to place individuals with disabilities in entry-level jobs, but rather to assist eligible individuals to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, and capabilities. The extent to which State units should assist eligible individuals to advance in their careers through the provision of VR services depends upon whether the individual has achieved employment that is consistent with this standard.

The provision of VR services to an eligible individual who is currently employed, but whose job is not consistent with the individual’s strengths, resources, priorities, concerns, abilities, and capabilities, must assist that individual to obtain employment consistent with the individual’s primary employment factors and informed choice. Under such circumstances, VR services would be provided for “career advancement” or “upward mobility” purposes. Similarly, post-employment services are also available to assist eligible individuals who have already become employed to advance in employment (§103(a)(2)).

There are several things to take away from this Policy Directive. First, the consumer’s choices after an “informed choice” decision is made reigns supreme. Second, the cost of obtaining the advanced degree cannot be a factor in determining the appropriateness of the employment goal. Third, entry level employment is appropriate if the consumer is only capable of performing such work or desires such work. Finally, achievement of an employment goal through VR is not to be equated with employment at “any job;” rather, VR agencies can assist individuals with obtaining advanced degrees that provide for career advancement and upward mobility.

It may surprise some that this is not new policy. In fact, it has been in place since August 19, 1997. Nonetheless, VR clients still have a difficult time getting VR agencies to pay for advanced degrees, despite employment goals requiring an advanced degree. VR clients interested in pursuing advanced degrees need to be aware of this federal policy directive, and not take “no” for an answer if they believe their employment goal is consistent with their individual strengths, resources, priorities, concerns, abilities, and capabilities. If you have questions or need assistance in working with your local VR agency, please contact South Dakota Advocacy Services’ Client Assistance Program at 1-800-658-4782.
The numbers 16, 17, 18, and 21 reflect the age at which certain things need to be included in a student's IEP or when specific notifications are required by the law and rules. This article will provide information related to the important special education milestones for students who are in the later years of their public school career and the legal requirements attached to those milestones.

The number 16 is very important. It is the very latest age at which the student's IEP must begin containing transition-related goals and services. This requirement is set out in the federal regulations at 34 C.F.R. §300.320(b), Transition services: "Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include — (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals." (Emphasis added). This regulation is critical in ensuring that Transition Services start at a defined point in the student's educational career.

While prior versions of the regulations included language requiring a determination of transition services needs at age 14 "or younger, if determined appropriate by the IEP Team," it is important for parents, teachers, and students to not overlook the current language following the clause highlighted above, "or younger if determined appropriate by the IEP Team." This language seems to be overlooked in discussions about transition services, but should not be. The first stated purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 34 C.F.R. §300.1(a) (emphasis added). For some students with disabilities, waiting until age 16 to begin transition services may be too late.

Parents and students should be aware of this language and actively seek discussion about the inclusion of transition services in the student's IEP prior to the age of 16. It is important because Transition is not an "event" that takes place at age 16 for all students with disabilities. It is a process that happens throughout the course of a student's educational experience. A child is always transitioning educationally toward the outcomes of "further education, employment, and independent living," and it is the school district's responsibility to ensure the student is prepared for those outcomes when leaving the public school. If students are not progressing, the services they are receiving should be reviewed to ensure that the student is making progress toward those outcomes. Progress is one aspect of transition and it is one that is required to be considered in evaluating the appropriateness all services a student is receiving. For some students, the specific emphasis toward the transition to adulthood needs to begin prior to age 16, and if it is not discussed and addressed prior to the IEP in place at age 16, that time is lost.

A question parents frequently ask is, "How do we know if our son or daughter should have transition services identified in their IEP prior to age 16?" As with all things in special education, the identified needs must be based on evaluations. That holds true in the area of transition services as well. So, how do IEP Teams know if a student has transition needs? Through specific evaluations of a student's transition needs. While the above regulation indicates the latest transition evaluations may take place is at age 15 (so that transition services are in place in the IEP when the student turns age 16), there is nothing in the rule that says that the evaluations need to wait until the child is 15. In fact, the regulation anticipates transition evaluations being conducted at age 12, 13, or 14, as transition services cannot start prior to age 16 ("or younger if determined appropriate") without transition evaluations being conducted at an earlier age.

There is a growing number of tools available to assist students in identifying their interests and assist them in identifying needed supports to address those interests. One of the readily available tools is the South Dakota My Life Website. The following is a quote from the recent posting in the Evidence Based Practices regarding Transition Services from the South Dakota Department of Education Newsletter. "South Dakota has an online tool to assist students as they navigate the career development process. http://www.sdmylife.com/. Students can better understand themselves and how their interests, skills and knowledge relate to real-world academic and career opportunities." The newsletter can be found on the Department's website. This newsletter story provides examples of how this tool is successfully used by teachers around the state to address Transition planning needs.

17 is an important number in the transition process because no later than the student's 17th birthday, school districts must have notified parents and students of the transfer of rights at the age of majority. This notice requirement is found at 34 C.F.R. §300.520(c), Transfer of rights at age of majority: "Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520."
It's Not About Blackjack
(Continued from page 14)

In South Dakota, the age of majority is 18. The following is a description of why this number is important in Transition discussions: "If parents have a child with a disability who they believe to be incompetent to make educational decisions upon reaching the age of majority, they should take steps in advance to go to court to become the child's legal guardian when the child reaches the age of majority. Failure to take these steps results in the transfer of parental rights under IDEA to the student, regardless of the child's inability to provide informed consent without court approval." What Parents Should Know ... About Special Education in South Dakota, p. 183.

That is why the one-year notice requirement regarding the transfer of rights is so critical, as it gives parents and students the opportunity to discuss and learn about the transfer of rights. It also provides the parents and students time to learn about options for addressing any concerns that they have regarding the transfer. These options can be crafted to assure that the needs of the students are met and the parents can make informed decisions about what steps they may want to take to address their concerns.

18

From the previous discussion, 18 is also an important number because it is the age of majority in South Dakota. The requirements for transfer of rights can be found at ARSD 24:05:30:16.01, Transfer of parental rights: "Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur: (1) The school district shall provide any notice required by this article to both the individual and the parents; (2) All other rights accorded to parents under this article transfer to the child; and (3) All rights accorded to parents under this article transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights. If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program of the child, the school district shall appoint the parent or, if the parent is not available, another appropriate individual to represent the educational interests of the child throughout the child's eligibility under this article."

Despite the straightforward language found in this section, many parents and students understandably have questions regarding this process. The purpose of requiring school districts to provide notice at least a year in advance of the transfer of rights is to give parents and students time to ask questions as to what this will mean for the student and determine if a limited or full guardianship is needed. Guardianship is a court process and must be begun months prior to the student's 18th birthday, so it is best to get questions answered early. If there are questions that arise regarding Guardianship, South Dakota Advocacy Services, the South Dakota Guardianship Program, and the State Guardianship Program at the Division of Developmental Disabilities are resources for more information.

18, 21

There are other reasons that 18 and 21 are important numbers in this discussion. At some point, the student's public education must come to an end. In South Dakota, eligibility for special education services ends in one of two specific circumstances.

A student's eligibility ends when he or she graduates from high school with a regular high school diploma. This constitutes a change in placement and thus triggers a notification requirement. The notification requirement must be provided at least 12 months in advance of the intended date of graduation. If the student has turned 18 and the parental rights transferred to the student, this notice would appropriately go to the student and may not reach the parents if the student chooses not to have them involved in these decision-making processes. That is not a likely scenario, but it could happen and should be planned for.

The 12-month notice requirement is important because it gives the school, the student, and the parents the ability to discuss any remaining academic requirements that may need to be met prior to graduation. In addition, the notice should trigger a discussion about any transition goals that need to be completed or implemented to assure that successful transition from school to post-school activities occurs. It is important that parents and students understand the transition goals in the event that they may not be met by the graduation date identified. If the transition goals are not met, despite the student having fulfilled the academic requirements for graduation, it is possible that the student would not receive a regular high school diploma and special education eligibility would continue until the goals are completed or until the student ages out of special education services.

The administrative rules describe when a student ages out of special education services in South Dakota. ARSD 24:05:22:05, Services to children age twenty-one, states: "A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year." For students still receiving special education services because graduation with a regular high school diploma has not occurred, the day that student turns 21 is important because special education eligibility ends at the end of the then-current school year. The school year in South Dakota ends on June 30, which is the end of the state's fiscal year. Because of this cut-off date, if a student turns 21 on June 30, that is the student's last day of eligibility for special education services. If the student turns 21 on July 1, the student has one more year of eligibility for special education services remaining.

The information in this article explains why 16, 17, 18, and 21 are very important numbers in the Transition Services area. Hopefully, the information described above has answered a number of questions one may have on transition services timelines, but each situation may present unique challenges. If you have further questions, please contact South Dakota Advocacy Services at 1-800-658-4782.
South Dakota Partners in Policymaking Starts Year 22
by Sandy Stocklin Hook

Twenty-nine individuals began their Partner journey in November with their first session of Year 22 of South Dakota Partners in Policymaking. The Class of 2014 consists of 14 parents, 11 self-advocates, and 2 Partner assistants. The 23 females and 6 males in the class represent 13 counties throughout South Dakota. Class participants are Leon Adams, Jr. from Sioux Falls; Diane Baumiller of Parkston; Marnie Boterman and Heidi Sato of Tea; Elizabeth Brown, Clear Lake; Brenda Dean, Jamie Never Misses A Shot, Katey Peschel, and Amy Roy of Huron; Jon Ekle, Valerie Gallagher, Angel Maggaard, and Nancy Schlichenmayer from Pierre; Kathie Erdman Becker, Crooks; Dan Guthmiller, Ryan Pederson and Becca Wells of Aberdeen; Crystal Hebbing, Winner; Kent Ickler and Monica Matt of Rapid City; Katherine Jaeger, Dakotah Dunes; Douglas Koutz, Holly Lemke, and Sue Sutton of Watertown; Tammy Luce, Wolsey; Lindsey Madsen, Harrisburg; Danella Peterson, Box Elder; Amy Sieh from Yankton; and Rhiannon Town, Roslyn.

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

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

The class is chosen by a selection committee comprised of graduates of the training. The committee uses criteria including representation from varying ethnic and cultural backgrounds, different geographic regions of South Dakota, and a mix of parents and self-advocates. Partner graduates Cary Gronemeyer, Sioux Falls (Year 12), Lori Douville, Chamberlain (Year 7), Estan Douville, Chamberlain (Year 21), and Vikki Day, Highmore (Year 10), served on this year's selection committee. Assisting was Tim Neyhart of South Dakota Advocacy Services (SDAS) and Arlene Poncelet of the SD Council on Developmental Disabilities.

Session One was held at the Governors Inn in Pierre on November 15-16, 2013. Robert J. Kean and Tim Neyhart of SD Advocacy Services welcomed the class to Partners and spoke about the DD Network. Kean is the Executive Director for SDAS and Neyhart is the Protection and Advocacy Developmental Disabilities (PADD) Program Director.

Dennis Hook of Pierre opened Session One with an ice breaker. Participants “threw” things like snakes, dinosaurs, and squiggly balls at each other, calling out their names. Hook would stop the action and ask the person holding a certain object different questions, all in an effort for the class to get to know each other. Amid laughs, squeals, and dropped objects, the class began the bonding/networking process.

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

Neyhart and Kean discussed the history of disabilities and how things looked and people thought and acted 50+ years ago. Neyhart said, “Change

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takes time and perseverance - it doesn’t happen overnight.” He provided a historical perspective of the landmark decisions that affect individuals with disabilities, focusing on how they affect individuals in South Dakota. Kean and Neyhart also described how, when change is voted into law, a series of meetings follow to compose the administrative rules of that law. They gave examples of the Developmental Disabilities law and rules.

Six graduates of Partners shared how Partners changed their lives. Lisa Merchen of Spearfish (Yr 16) explained how Partners changed not only her, but also her family. “I did Partners because first and foremost I am a mom of a son who has Down syndrome. But I gained so much - friendships, support, knowledge, and I learned to forgive myself. Partners is about sharing our stories, positive conversation, and working forward.” Year 21 graduate, Max Merchen of Spearfish, encouraged the class, “I learned to moved forward, how to do it right. I learned patience, persistence, and getting involved.” Merchen also encouraged the class to get to know each other, “not just those in this class, but also the 500-plus graduates.”

Julie Lewandowski (Yr 21), Spearfish, remarked how Partners helped her in her job, as she gained insight on capabilities of others and how important choices are. She said she will “rely on her training to help her think on her feet, be fair, and run a meeting.” Amy H. Schwender of Spearfish, also Year 21, stressed how it is important to learn to advocate for yourself. “Now help out my friends. They look to me as a leader. I was scared when I first came to Partners, but now when I look back I realize it was fun and I learned a lot.”

“Don’t go around with a chip on your shoulder or an attitude; be willing to negotiate. Partners taught me to pick my battles to work together,” said Kevin Himers of Huron, a graduate of Year 21. He explained how he turned to music to help him cope with his disability and bullying as a youth. “Partners gave me the courage to take my music a step further and last summer I sang the national anthem at a Sioux Falls Canaries game. Yes, I was scared, but because of my training through Partners, I faced those fears and accomplished my goal.”

Julie Yellow Cloud (Yr 15) explained how Partners gave her a voice that she is sharing throughout her reservation by helping families to learn to advocate for their children. Yellow Cloud lives in Porcupine on the Pine Ridge Tribal Nation. “Advocating on a Tribal Nation is totally different than in an urban area, but Partners gave me the knowledge and voice to educate and share with others and to make a difference.” Yellow Cloud told the class, “Do your homework – it’s not graded and it’s fun!” She also said through Partners she learned so much from the self-advocates in her class. “I learned when to step up for my son, but more importantly they taught me when to back off. Knowledge is your best friend - learn about your disability, teach your child, don’t be ashamed.”

South Dakota Partners in Policymaking is funded in part by grants from the South Dakota Council on Developmental Disabilities, Center for Disabilities of Sanford School of Medicine at USD, South Dakota Parent Connection, Children’s Care Hospital & School, and the PADD, PAIR, and PAIMI Programs of SDAS. Sandy Stocklin Hook of Pierre is the Program Coordinator, assisted by Year 7 graduate, Lori Doulville.
GOT STRESS?
by Marie McQuay

We all experience stress. Stress is a normal part of our lives, but how we respond to it can determine the impact it has on us. This article will identify types of stress, the effects it can have on a person's body and mind, and what we can do about it.

Generally, there are two types of stress. The first is distress. Distress is the most common type of stress, which usually has negative implications and may lead to anxiety, withdrawal, and depressive behavior.

You are probably stressed if your concentration is poor, you feel on edge or rattled, or you feel anxious. Eustress, on the other hand, is good stress. It is the positive cognitive response to stress that is healthy or gives you a feeling of fulfillment or other positive feelings. Eustress usually brings life satisfaction and well-being.

Stress causes the “fight or flight” system in your body to activate. This reaction is wired into your brain and nervous system and is there to preserve your life by causing you to fight the threat you are facing or to run from the danger. “Perceived” danger causes this same “fight or flight” system to activate when we are stressed-out, but not actually in any physical danger. This “fight or flight” reaction can cause a large release of adrenaline. It can also cause blood pressure to increase and a rush of blood to flow out of your extremities and into the large muscles of your arms and legs. In addition, shallow and fast breathing can occur, along with sweaty palms, etc. Psychologically, it can shut off one’s high level of thinking, because if one thinks too much in dangerous situations, one’s reaction time is slowed and one can get hurt or die. Our brains are wired to become impulsive and to make us react more quickly. These natural and normal reactions to stress can create uncomfortable feelings of anxiety and eventually can cause exhaustion. Over time, we can get used to it, but many times the body’s stress reactions can stick around longer than needed, and we will experience some of the symptoms in the lists to the right. Check those that you are experiencing and total each category.

If you checked five or more of the symptoms, you may want to try some of the following suggestions:

<table>
<thead>
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<th>Behavioral (15)</th>
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<tbody>
<tr>
<td>__headaches</td>
<td>__foot tapping</td>
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<td>__muscle tension</td>
<td>__low productivity</td>
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<tr>
<td>__fatigue</td>
<td>__nervous laugh</td>
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<tr>
<td>__muscle aches, pains</td>
<td>__finger drumming</td>
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<tr>
<td>__digestive upset, nausea</td>
<td>__crying spells, or urge to cry</td>
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<tr>
<td>__pounding heart</td>
<td>__temper outbursts, lashing out</td>
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<tr>
<td>__racing heart</td>
<td>__social withdrawal, avoiding others</td>
</tr>
<tr>
<td>__trembling, shaking, twitching</td>
<td>__irritability, snapping at others</td>
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<tr>
<td>__shortness of breath</td>
<td>__sleep changes</td>
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<td>__dizziness, lightheadedness</td>
<td>__loss of interest in sex</td>
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<tr>
<td>__diarrhea</td>
<td>__tooth grinding</td>
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<tr>
<td>__numbness or tingling in body</td>
<td>__appetite changes, loss or excessive</td>
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<tr>
<td>__dryness in mouth or throat</td>
<td>__accident proneness</td>
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<td>__nagging</td>
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<th>Mental (15)</th>
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<td>__frustration</td>
<td>__poor concentration</td>
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<tr>
<td>__the “blues”</td>
<td>__negative attitude</td>
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<tr>
<td>__mood swings</td>
<td>__no new ideas</td>
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<td>__emptiness</td>
<td>__daydreaming</td>
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<tr>
<td>__self-doubt</td>
<td>__confusion</td>
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<tr>
<td>__apathy, not caring</td>
<td>__poor problem-solving</td>
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<tr>
<td>__resentment, bitterness</td>
<td>__whirling mind, racing thoughts</td>
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<tr>
<td>__loneliness</td>
<td>__spacing out</td>
</tr>
<tr>
<td>__&quot;no one cares”</td>
<td>__sluggish mind</td>
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<tr>
<td>__worrying</td>
<td>__pessimism, things can’t get worse</td>
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<tr>
<td>__discouragement</td>
<td>__thinking you’re out of control</td>
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<tr>
<td>__little joy</td>
<td>__thinking that you’re no good</td>
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<tr>
<td>__restlessness</td>
<td>__thinking the world is against you</td>
</tr>
<tr>
<td>__boredom</td>
<td>__thinking that no one cares</td>
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<td>__Total</td>
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Got Stress?
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♦ Control your body’s reaction to stress by not talking or thinking negatively about yourself. Make positive changes in your life.

♦ Exercise by working out or walking each day can decrease stress.

♦ Getting enough sleep each night is very important to being well rested and better equipped to handle the next day. The bed should not be a place for television viewing or reading. An hour before you want to go to bed, turn the lights down. If you want to read, read something not stimulating so that your body can produce the melatonin essential to cause you to fall asleep. Don’t watch the clock and expect to fall asleep.

♦ Do not drink caffeine or smoke cigarettes within six hours of going to bed. Alcohol is not good as a sleep aid.

♦ It is also very important to eat breakfast, lunch and dinner to keep your blood sugar stable. Managing your time better can also reduce your stress levels. Write things down that need to be done and try not to procrastinate. Delegate duties to others when possible.

♦ Make supporting relationships so that you can vent to someone if necessary.

♦ Write down things that cause you to have conflict or stress and write down possible solutions. Guided imagery and meditation can be effective for some people.

♦ Develop a hobby that is relaxing and that you enjoy doing.

♦ The fastest and most effective way to reduce unwanted stress is to take control of your body’s reaction to stress and to train it to relax when the “fight or flight” reaction is no longer needed. More techniques to reduce stress are posture relaxation techniques, diaphragmatic breathing, and progressive muscle relaxation.

Relaxation Training: Posture

If you want to stay awake:
♦ Legs uncrossed
♦ Feet flat on floor
♦ Small of back against back of chair
♦ Body is upright but relaxed
♦ Head upright & forward
♦ Shoulders sagging
♦ Arms resting in lap, hands unclasped
♦ Face relaxed, eyes lightly closed
♦ Teeth slightly parted (about the width of a pencil eraser)

If you want to go to sleep:
♦ Lie down on your back and put a pillow/soft object under your lower legs to lift them up a little.

Diaphragmatic Breathing

1. Take 3 deep cleansing breaths, holding each breath momentarily, and then start diaphragmatic breathing.

2. As slowly as possible, inhale through your nose, expanding your chest and making your stomach push out. As you reach the count of 10, you should not be able to get any more air into your lungs. It is important to count from zero to ten in your head as you inhale each time.

3. Hold the breath for a count of 3.

4. As slowly as possible, exhale through the mouth. It is important to count in your head from ten to zero as you exhale.

5. When you reach “zero” in your count after exhaling all your breath, say the word “relax” in your head.

6. Continue this way of breathing 5-10 cycles before starting progressive muscle relaxation. Remember to keep counting in your head while breathing and saying “relax” every time you reach zero. Your nose, ears, fingers, and toes will begin to tingle and get warm as blood returns to them. You sometimes will feel like you are floating.

Even after the first time of doing this, the word “relax” will become associated with this feeling of calm. You are training your body to shut off the “fight or flight” response. In the future, if you need a quick moment to relax, take 3 deep breaths and say the word “relax.” Your anxiety and stress will instantly reduce, and you will be able to think more clearly.

Progressive Muscle Relaxation

Instructions:
♦ Practice this procedure at least once a day while doing diaphragmatic breathing.

♦ Focus your attention on your breathing, counting, muscle flex/relaxation, and on the word “relax.”

♦ When you have regulated your breathing, focus on the muscle groups in sequence - start at the top of your head and work your way down to your toes.

♦ When you tighten your muscles, only tighten them at ½ strength. Do not tighten them as hard as you can.

♦ Tighten each muscle group as you inhale, then release and relax them as you exhale. Move on to the next muscle group and do the breathing/flex/relax cycle until all muscle groups are completed.

♦ After all muscle groups have been flexed and relaxed, continue diaphragmatic breathing for 10 more cycles to experience the relaxed physical sensation.

Muscle Groups:

Forehead: Raise your eyebrows up as far as you can.

Jaw/Eyes: Clench your jaw and squint/tighten your eyes.

Neck: Move your chin down towards your chest and flex your neck muscles.

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Shoulders: Shrug your shoulders up as if you were touching them to your ears.

Chest: Flex chest muscles by placing the palms of your hand together in front of you and push against each other.

Arms: With your palms up, make fists, draw them up to your shoulders, and pull your elbows into your sides.

Stomach: Tighten your abdomen like you are preparing to be punched in the stomach.

Legs: Straighten your legs at the knees, and point your toes toward your head, then away from your head.

Feet: Put your feet back on the ground and draw your toes down so they are like a fist.

Everybody has stress, and we all have to live with it. Some people cope better than others. I hope these suggestions will help you to better manage your stress.

Information for this article was provided at a training by Lee Sasse, clinical social worker at Ellsworth Air Force Base, Mental Health Clinic and Advocacy Program.

Calendar

♦ January 16, 2014 - Fundamentals of Fetal Alcohol Spectrum Disorders (FASD), Rapid City
♦ February 4, 2014 - Children’s Day at the Capitol, Pierre
♦ February 6, 2014 - Fundamentals of FASD, Pierre
♦ February 12, 2014 - Disability Awareness Day at the Capitol, Pierre
♦ February 27, 2014 - Sanford FASD Symposium, Sioux Falls
♦ March 25-26, 2014 - 2014 SD Special Education Conference – Pierre
♦ March 27, 2014 - Fundamentals of FASD, Newell
♦ April 14-16, 2014 - Center for Disabilities Spring Conference

SDAS Staff Update:

Pamela Stout joined South Dakota Advocacy Services (SDAS) on December 2, 2013, to fill the full-time position of Fiscal Assistant in the Pierre office. Pamela, from Ft. Pierre, SD, has 25+ years of business-related accounting experience doing many tasks similar to those that fall within her job description at SDAS. We welcome Pamela to the agency and wish her well in her new position. Pamela replaces Kimberlee Kaiser who left the agency after three years to pursue interests in the trust accounting arena. We wish Kimberlee continued success in her new endeavours.

If you would like to receive the South Dakota Report electronically, please email Sandy Stocklin Hook at hooks@sadvocacy.com and she will include you on the list.