



Disability Rights
South Dakota

South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

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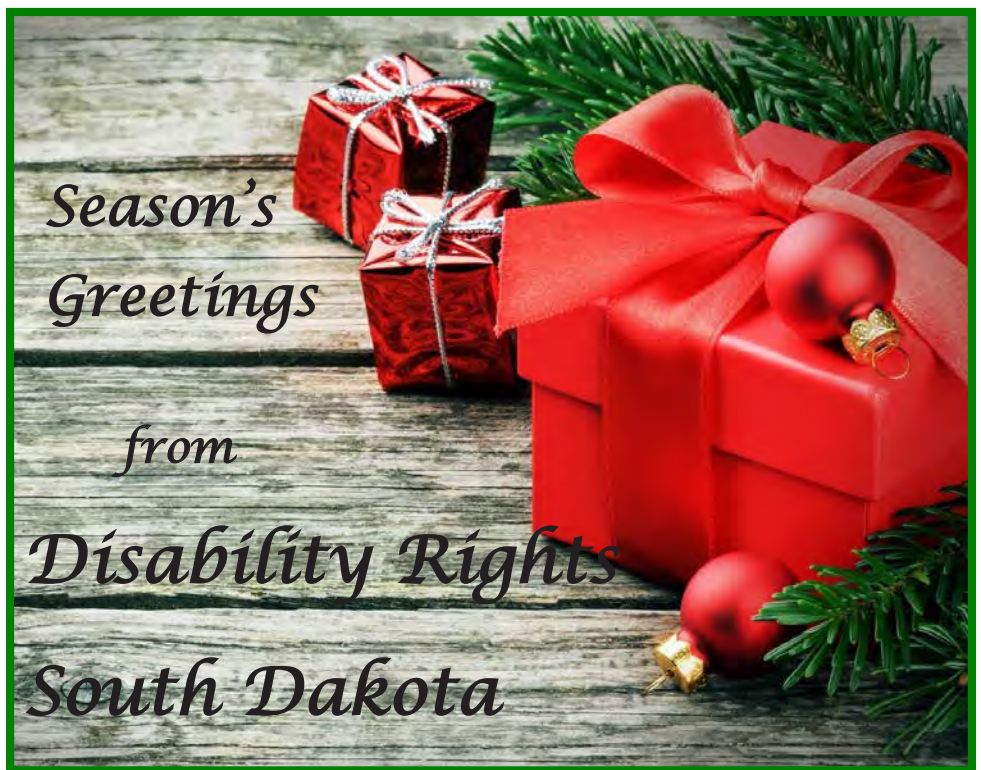
When Should I Call DRSD?

by Tim Neyhart

A lot of changes have taken place at Disability Rights South Dakota (DRSD) over the last three-and-a-half years. The agency has experienced a new Executive Director and a name change. These two changes may be the ones that many people are aware of in the disability community. These two changes may seem to be significant, but they are only a small part of the changes going on at DRSD.

DRSD has changed the intake system to have all intake calls come through the Pierre office. This process serves several functions. It allows all intake calls to be monitored, reviewed, or supervised by an attorney. Routine calls, such as requests for phone numbers for agencies, are answered directly by the Intake Staff. For answers requiring further analysis, the Intake Team meets and discusses the information from the calls prior to answering the questions.

The Intake Staff are trained on the intake procedure and trained to work with the caller to get the best information possible. This process assists callers to clearly identify their concerns and to assure that DRSD can provide correct answers to their questions. DRSD now has two Intake Specialists. Prior to October 1, 2017, there was only one staff assigned to take intake calls. It was clear that this was a lot to ask of one person, so the duties for that position were split. The two Intake Specialists will split their days between intake calls and casework.



DRSD is obligated under its Federal Grant awards to provide a full range of advocacy services. This range of advocacy services includes services ranging from information and referral services to legal advocacy at the state and federal court level. While DRSD has changed its intake process over the years by centralizing it, creating the Intake Team, and recently adding a second Intake Specialist to improve the process for callers, DRSD has always been available to provide information and referral services to all callers on a variety of disability-related topics.

The agency has received questions about when it is appropriate to call

DRSD. It is always appropriate to call DRSD on disability-related issues. By going through the intake process,

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callers will be able to have their issues assessed for eligibility for other advocacy services.

DRSD staff will work with all callers by providing information to address their expressed needs. Individuals with disabilities who have issues that meet the identified priorities of the agency programs will be provided further advocacy services if program resources are available to meet those needs.

DRSD has made changes in its priorities regarding the kinds of cases that will be eligible for further advocacy services. The two primary changes are in the areas of Social Security eligibility and the types of cases that the agency addresses in the area of special education. DRSD no longer takes cases regarding Social Security eligibility, such as SSI and SSDI cases. In the area of special education, DRSD will focus on abuse and neglect, seclusion and restraint, suspension and expulsion, and transition services. The priority for these cases is to identify those cases that will affect how the system works. This means that within the identified priorities, the staff are looking for those cases that will affect as many people as possible. There are procedures available in DRSD policy to allow for consideration of exceptions to the priorities. This type of request will need to contain a strong argument for how the case will impact the system.

When you are considering calling DRSD for assistance, please call on your own behalf if possible. If you call directly, you will have the opportunity to hear the explanation of the information about your question without having to go through the filter of another person. People who need support to call should seek that support, but they should be on the call with the support staff if possible. This will enable the Intake Specialist to inquire about information that may be needed from the person, but may not be available from a support staff or a third party.

When in doubt about whether you should call DRSD, DRSD encourages you to "call." Trained staff will work with you to identify and address your issues. For more information about DRSD's 2018 priorities, please see the DRSD website at www.DRSDlaw.org or call 1-800-658-4782 to talk with an Intake Specialist.

Middleton Resigns

Long-time administrative assistant in the Pierre office, Pam Middleton, resigned from the agency effective September 29, 2017. Middleton was a part of the DRSD team for a little over 15 years. She was the voice behind the phone when you called DRSD's Pierre office and assisted all staff in helping to make their jobs easier.

DRSD wishes Pam much luck and success in her new endeavor.



Disability Rights South Dakota (DRSD) 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. DRSD 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 DRSD services and priorities are welcome.

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

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An Update on the DRSD Intake Process

by Rod Raschke

In addition to SDAS' name change to Disability Rights South Dakota (DRSD), there have also been changes to the Intake Process. There are now two Intake Specialists to assist callers and expanded afternoon hours. The Intake hours are 9:00am to Noon, and 1:00pm to 4:00pm. DRSD believes these changes in staff and hours give the people of South Dakota more opportunities to call and speak to an Intake Specialist and to get their disability-related issues or questions addressed.

For those who are not familiar with DRSD's Intake Process, here is a summary: New callers at each DRSD location are directed to an Intake Specialist in the Pierre office. An Intake Specialist will speak with the caller to get basic background information, including name, address, phone number, and type of disabilities. The Intake Specialist will then guide the caller through the process of gathering more detailed information regarding the issues and the people or agencies involved. Gathering this information helps the Intake Specialist to identify which of DRSD's eight programs the person with the disability or the issue falls under. DRSD has eight federally-funded programs, each with distinct eligibility requirements and priority areas. The more detail that can be gathered through the Intake Process, the easier it is to assign cases to the proper program.

During the initial call with the Intake Specialist, there may be an opportunity to help the caller at that time. These types of calls are simple Information and Referrals (I&Rs). The Intake Specialists may refer the caller to another agency as appropriate, direct the caller to a website with information that will be helpful, or provide a phone number or address the caller had not been able to find. These are examples of the assistance an Intake Specialist may provide during an initial call. Intake Specialists are not attorneys, so they may not provide advice without first consulting a Staff Attorney.

If the caller needs more assistance than what can be given by the Intake Specialist, for example, wanting advice on steps to take in a meeting or needing assistance from an advocate or attorney, the Intake Specialist will refer the issue to the Intake Team. The Intake Team consists of a DRSD Staff Attorney and the two Intake Specialists. The team reviews each request for assistance to determine if the individual with a disability meets eligibility criteria for one of DRSD's programs and, if so, whether the issue falls within the program's priorities. The Intake Team also determines if the issue can be addressed as an

I&R (providing advice) or if the issue should be assigned to an advocate or attorney. If the issue can be addressed through providing advice, the Intake Specialist will contact the caller and relay the advice given by the Staff Attorney.

If the issue cannot be addressed through an I&R, the person with a disability meets program eligibility, and the issue falls with priorities, the Intake Specialist will assign the case to an advocate or attorney. The advocate (or

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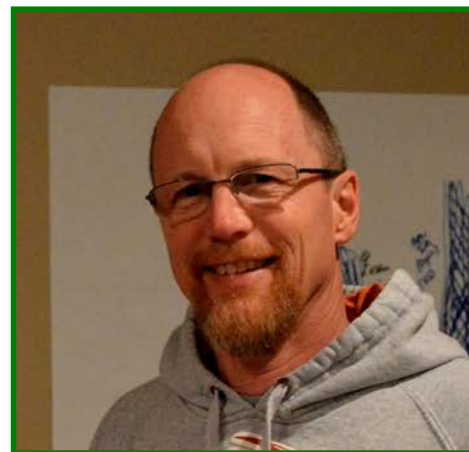
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New Intake Specialist/Advocate in Pierre Office

Brian Poelstra began working at Disability Rights South Dakota in October 2017 as an Intake Specialist/Advocacy Services Representative. Brian shared the following:

I was born in May of 1970 and grew up in Hayti, SD, which was a true example of small town America. I have one sister and my parents still reside in the house that I grew up in. So, I can still go home if you know what I mean. Following graduation from Hamlin High School in 1988, I attended South Dakota State University, graduating in 1993 with a degree in Athletic Training. I returned to school a couple of years later and received my master's degree in Physical Therapy from the University of South Dakota in 1999. Over the next 17 years, I worked as a physical therapist at various locations across South Dakota.

I am married to Rebecca Rennolet Poelstra and we have two sons, Anthony and Ethan. Anthony is in the second grade and Ethan is in the early childhood program, as he was diagnosed with Down Syndrome when he was born. Those boys are the best and I would not trade them for the world.



Brian Poelstra

I enjoy the outdoors and I am an avid bowhunter. I love hunting, fishing, riding motorcycle, and recently, at the urging of my oldest son Anthony, I have taken up Tae Kwan Do as a way to stay active (but also to spend more time with my son).

In the short amount of time that I have been with Disability Rights South Dakota, I have met great people and have learned a lot about the programs as well as myself. I look forward to continuing to meet and work with more people and to continue to learn new things and grow as a person.

Time to Shine...

by Dianna Marshall

After nearly 30 years of providing advocacy assistance to individuals with disabilities, particularly at the state-operated inpatient psychiatric hospital in Yankton - the Human Services Center (HSC), Twila Stibral is no longer “the face of advocacy” for patients at HSC. Due to the restructuring of Disability Rights South Dakota, the Yankton office closed on September 30, 2017.

Twila was hired to assist with the implementation of the Protection & Advocacy for Individuals with Mental Illness (PAIMI) Program’s office in Yankton. With the help of Twila, the South Dakota PAIMI Program was one of the first in the nation to have an office on the grounds of a state-operated inpatient psychiatric hospital. She successfully resolved numerous issues of neglect, abuse, and rights violations for many, many patients. Twila also be-



Twila Stibral

came the Program Director of the Protection & Advocacy Traumatic Brain Injury (PATBI) Program three years ago. She was responsible for the implementation of that program in addition to her duties as an Advocacy Services Representative. Twila’s dedication, compassion, wisdom, tenacity, and caring demeanor will truly be missed. Thank you Twila for all you have done for the PAIMI Program and Disability Rights South Dakota. In the words of Julius Caesar, “*Veni, Vidi, Vici,*” but to Twila we say, “She came, She saw, She conquered!”

In Memoriam Norma Vrondran

Norma Vrondran, Administrative Assistant in the Sioux Falls office for nearly 23 years, passed away on November 14 after a lengthy illness. She was born in McLaughlin, SD on January 4, 1957. Her family moved to Buffalo, SD in 1959 and Norma lived there for nearly 30 years. She settled in Sioux Falls in 1990 and graduated from the Stenotype Institute of South Dakota with a legal and executive secretary degree. Disability Rights South Dakota hired Norma as Secretary/Receptionist in the Sioux Falls office on November 14, 1994.

From her service bulletin: During her life, Norma was blessed with many dear friends who she considered family and touched many lives. Norma was a mom and a grandma to more than just family because everyone was family, even her pets and children’s pets that she called her grand babies. She enjoyed spending time outdoors camping, fishing, and gardening. She loved canning, baking and cooking and would give away homemade salsa or baked goods, always thoughtfully remembering the picky eaters and made a special batch just for them. She loved nothing more than to spend time with her children, grandchildren, siblings, and friends, always able to put a smile on people’s faces. The only thing she hated was goodbyes.



Norma Vrondran

Norma had been the voice one heard when calling the Sioux Falls office for over two decades. She assisted our advocates and attorneys with typing, proofing, filing, organizing files, preparing legal documents, and numerous other tasks. When Norma became unable to continue working in August for medical reasons, we held out hope for improvement. Her last official day with DRSD was September 29. Not only did we lose a long-time employee, but we lost a friend.

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attorney) then follows certain procedures in contacting the caller and beginning the case work.

If the person is not eligible for a DRSD program or the issue does not meet current priorities, the Intake Team will determine what suggestions can be made to the caller and how these suggestions will assist in the caller in self-advocating. The Intake Specialist then contacts the caller and goes over the suggestions from the Intake Team. Callers are always informed that they can contact DRSD again if their self-advocacy cannot resolve the issue.

This is a very brief explanation of the Intake Process. DRSD prides itself in making every call to DRSD a priority and ensuring that each individual caller with a disability-related issue receives the assistance he or she needs.

Legal Pull-out Section

November 2017

The Elusive Procedural Due Process in the Community Service Provider System

by John A. Hamilton

Persons with disabilities receiving services from the Community Service Provider (CSP) system, administered by the South Dakota Department of Human Services, Division of Developmental Disabilities, have several rights set out in South Dakota statutes and administrative rules. One of those rights concerns the ability of an individual (or parent of a minor or guardian) to contest a termination or reduction of services. A termination means the person is being kicked-out of the CSP. A reduction in services could mean several things. It could mean the CSP is decreasing the number of hours a service is provided. It could mean a certain type of service is being eliminated. For example, a reduction of services could mean the number of hours per week with 1:1 supervision is being decreased. It could mean residential services are being eliminated, while day services continue. While an individual's "due process" rights when a CSP decides to reduce or terminate services are set-out to an extent in administrative rules, the rules do not accurately describe the appeal process used in practice.

Procedural Due Process

Before discussing a person's "due process" rights, it is important to understand what the term means. "Due process" is a concept meaning one has the right to notice and the opportunity to be heard in an orderly proceeding to enforce and protect one's rights. It is derived from "due process" clauses in the 5th and 14th Amendments to the United States Constitution. The 14th Amendment made such requirements applicable to the States. There are two aspects of due process – procedural due process and substantive due process. Procedural due process means a person is guaranteed fair procedures. Substantive due process means a person's property is protected from unfair governmental interference or taking.

Procedural due process is the cornerstone of our court system. It is a system set up to prevent arbitrary determinations against an individual without affording the individual one's "day in court" to contest the determination. Some obvious examples include how someone charged with a crime is entitled to a trial and how the prosecutor must prove guilt beyond a reasonable doubt, how taxpayers have the right to contest land value assessments at a hearing, and how students have the right to a school board hearing before a district can suspend them for over ten days or expel them.

Procedural due process exists whenever there is a reference to an individual's rights. Where there are rights, there must be a way to address a rights violation. This may include an internal grievance procedure. It may include the right to a hearing before

a court or administrative hearing officer. For example, in the area of special education, parents have the right to request a "due process hearing" when they disagree with an action proposed or refused by a school district. At the hearing, both the parents and district may call witnesses, present evidence, and be represented by an attorney. Several other procedural rights attach, including the right to appeal the hearing officer's decision into State or federal court. Presumably, a person with a disability receiving services from a CSP has similar procedural due process protections. Depending on agency preference, the terms "hearing examiner" or "administrative law judge" may be substituted for "hearing officer." Instead of "due process hearing," one may see terms such as "administrative hearing" or "fair hearing."

Constitutional Rights of CSP Participants

For purposes of this discussion, the individual with a disability will be referred to as "participant" to be consistent with South Dakota's administrative rules. CSPs provide participants with information on their rights as part of their admissions packets. Chapter 46:11:03 of the Administrative Rules of South Dakota (ARSD) sets out participants' rights at ARSD 46:11:03:00:

Participant's rights. A participant has rights guaranteed under the constitution and laws of the United States and the state including:

- (1) To be free from abuse, neglect, and exploitation;
- (2) To have privacy, dignity, confidentiality, and humane care;
- (3) To be able to communicate in private;
- (4) To be able to communicate in the participant's primary language or primary mode of communication;
- (5) To be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies, or exercising a legal right;
- (6) To be able to maintain contact with family and friends, unless contact has been legally restricted;
- (7) To be able to refuse or discontinue services;
- (8) To have access to, read, and challenge any information contained in the participant's record;

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(9) To have access to an advocate as defined in subdivision 46:11:01:02(1) or an employee of the state's designated protection and advocacy system;

(10) To be provided choice among waiver services and providers;

(11) To be informed of the provider's grievance procedures pursuant to § 46:11:03:06; and

(12) To have a written residential lease agreement that meets the requirements of applicable state law contained in SDCL chapter 43-22.

Written notice of the participant's rights shall be provided to the participant in an accessible format. If the participant is a minor under SDCL subdivision 29A-5-102(8) or a protected person under SDCL subdivision 29A-5-102(4) the notice shall also be provided to the participant's parent or guardian, respectively. The notice may be provided to the participant's advocate upon the request of the participant and parent or guardian, if applicable.

The notice and training on the participant's rights shall be provided upon admittance to the provider and annually thereafter.

While some of these rights are specific to a person receiving services from a CSP, the State, of another private entity, many of these rights are the same as all Americans enjoy.

There are also sections within the "rights" chapter on abuse and neglect (ARSD 46:11:03:01) and critical incident reports (46:11:03:02). There are sections on procedures for grievances (46:11:03:06), rights restrictions (46:11:03:08), emergency rights restrictions (46:11:03:09), restoration plans (46:11:03:10), and releasing information (46:11:03:11). The administrative rules also contain requirements to ensure safe and appropriate living conditions within Chapter 46:11:06, such as safety and sanitation, capacity of group homes, and food storage. There is a chapter on Health Care Services (46:11:07) that addresses things like medication administration, storage, and destruction. The administrative rules for persons with developmental disabilities provide extensive sections on the above topics.

CHOICES Waiver Services

One program in which participants may receive services from a CSP is CHOICES Waiver Services, contained at ARSD Chapter 46:11:08. The CHOICES (Community, Hope, Opportunity, Independence, Careers, Empowerment, Success) waiver is a 1915(c) waiver designed to provide for the health and developmental needs of South Dakotans with intellectual/developmental disabilities who would otherwise not be able to live in a home and community base setting and would require institutional care. The goal of the CHOICES waiver is to assist individuals in leading healthy, independent and productive lives to the fullest extent possible; promote the full exercise of their rights as citizens of the state of South Dakota; and promote the integrity of their families. The CHOICES waiver serves individuals of any age with intellectual or developmental disabilities.

CHOICES waiver services must be "tailored to the preferences and priorities of each participant." ARSD 46:11:08:01.

The types of services available are extensive and set out in the same section. This article, however, will not address the services available, but rather what occurs when a CSP intends to reduce or terminate a participant's services. The following administrative rules apply when a CSP wishes to reduce or terminate a participant's services:

46:11:08:04. Notice of reduction of services. The provider shall inform the participant in writing of the intent to reduce services and the participant's right to appeal the reduction of services to the division, ten calendar days prior to the date of the provider initiated action. This notice must be documented and can only be waived if the participant or legal representative provides to the provider a clear written statement signed by the participant or legal representative stating that the participant or the participant's legal representative agrees with the reduction of services. When reduction of services are being appealed, services cannot be reduced until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

46:11:08:05. Termination of waiver services -- Provider initiated. At least 30 calendar days before a provider terminates services to a participant, the provider shall provide notice of its intention to the division. The notice shall specify the provider's reasons for the action. The provider shall provide information to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian regarding the availability of other services in the community and the participant's right to appeal the decision to the division. The provider shall have a policy that addresses notice of termination of services. Notice must be provided at least 30 calendar days prior to termination to the following:

- (1) The participant, with accommodations made for people who have difficulties communicating;
- (2) The participant's parent if the participant is under 18 years of age;
- (3) The participant's guardian;
- (4) All of the participant's ISP team; and
- (5) The division.

When a termination is being appealed, the participant shall continue receiving services from the provider until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

The administrative rules for both reduction of services and termination of services specifically refer to a participant's right to appeal "the reduction" and "the decision" to terminate, respectively, to the Division of Developmental Disabilities ("DDD" or "the Division"). However, despite this plain language in the rules, one cannot actually appeal the propriety of the reduction or termination of services to DDD. Instead, the Division will only review the situation, speak with individuals, review documents, and then determine whether the CSP followed the law and procedures in issuing its notice of reduction or termination of services. Despite the reference to an administrative hearing in both rules, there is no administrative hearing when appealing to DDD. If DDD finds the CSP did not

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follow the correct procedure, the CSP may not reduce or terminate services. If DDD determines the CSP followed procedures, the reduction/termination would take effect in 30 days unless the participant further appeals.

DDD's written decision on whether the CSP followed required procedures includes notice to participants that they can further appeal by providing notice to the Secretary of Human Services within 30 days. It is at this level that the administrative hearing referenced in both rules is to occur. Both rules also require that when a reduction or termination of services is being appealed, "the participant shall continue receiving services from the provider until a decision is reached after a hearing." Therefore, from the time the CSP issues its notice of reduction or termination, through the completion of the second appeal when the hearing officer issues his or her final decision, the CSP must continue to provide the services it wants to reduce or continue to serve the participant it desires to terminate.

As mentioned above in ARSD 46:11:03:00(11), each CSP must have a grievance policy and procedure in place. In addition to providing an internal grievance procedure to address a variety of concerns, a typical CSP grievance procedure will also contain a section on appealing the provider's decision to reduce or terminate services, again referencing the right to appeal the reduction/termination to DDD. The typical CSP grievance policy also contains a section on the right to request a fair hearing in all instances when a participant's services are denied, suspended, reduced, or terminated, again containing language that when the action is being appealed, the services shall continue until a decision is reached after the hearing. CSP policy is thus consistent with the administrative rules in terms of the participant's ability to appeal a reduction or termination of services and how services must continue until a decision is reached after the administrative hearing. These policies read as if an individual has the procedural due process right to an administrative hearing to contest what he or she believes to be an improper reduction of services or improper termination of services.

Holes in the System

There are a number of concerns and inconsistencies with the system in place, although one very significant concern appears to have been recently resolved. Starting with the decision to reduce or terminate services, there are no rules governing the bases a CSP may use to make such a decision. The rule on reduction of services does not require CSPs to provide an explanation. With a termination, the rule requires the CSP to give its reasons for the action, but the rule goes no further. Per the language of the rule, the reasons given could be anything, regardless of accuracy or legitimacy. For example, a CSP could state a termination is due to behaviors, even though the reason for the behaviors was inadequate staffing by the CSP. A CSP could state a reduction in services is because it might not be able to continue to find staff in the future to provide the service. Under the rule, any reason appears to meet the procedural requirement.

Another concern with the process involves the appeal to DDD. The language contained in the administrative rules informs a participant he or she has the right to "appeal the re-

duction of services" and "appeal the decision" (to terminate services) to DDD. Similarly, CSP policy informs participants of their right to appeal a reduction or termination of services to DDD. Participants, and for that matter anyone reading these rules or policies, are led to believe a participant can appeal the actual reduction or termination of services to DDD. That is exactly how the language reads; it is not open to other interpretation. Participants are in for a surprise when they find out DDD will not address whether the participant should have services reduced or be terminated from the program. Instead, the Division will review the situation only to determine if the CSP followed proper procedures (*i.e.*, gave timely written notice, sent the notice to the proper persons, informed the participant of timelines for appealing). When asked, DDD will explain it does not have the authority to require a CSP to serve an individual or provide any particular service, so its review is limited to whether the CSP followed procedures. Assuming the validity of DDD's position, the language of the above rules, as well as the "right to appeal" information that CSPs provide participants, is inaccurate and extremely misleading. In most situations, the appeal to DDD is a mere formality because the CSP will have followed proper procedures. However, this step in the process allows for about 60 extra days of services. If DDD finds a CSP did not follow procedures with a reduction or termination of services, the CSP may not go forward with the planned reduction or termination of services. However, the CSP may start the process over by issuing a new notice of reduction or termination.

The most significant concern revolves around the next step in the process. The administrative rules for reduction and termination of services do not describe the process or timeline for a further appeal. They refer only to an appeal to DDD. However, they state that during an appeal, services cannot be reduced/terminated "until a decision is reached after a hearing pursuant to SDCL chapter [1-26](#)." Chapter 1-26 of South Dakota Codified Laws sets out procedures for administrative hearings. While the rules on reduction and termination are silent on the time limit for appealing and provide no direction on how to appeal for an administrative hearing, they each clearly set out a "stay-put" requirement until the administrative hearing process is completed. The rules on reduction and termination of services therefore clearly contemplate participants' right to an administrative hearing, but provide no procedure for appealing to that level.

While not contained in the administrative rules, the decision participants receive from the Division provides participants with information on when and how to appeal. It tells participants they may appeal by notifying the Secretary of Human Services within 30 days. Similarly, CSP policy will typically inform the participant of the right to appeal a reduction or termination and of the right to request a "fair hearing" by notifying the Department of Human Services within 30 days of the decision by DDD. In policy, if not in rule, it would appear procedural due process is in place where participants may contest a CSP's decision to reduce or terminate services.

A participant recently tested this process. Following DDD review, the participant appealed a reduction of services with DHS as directed in DDD's decision. DHS forwarded the case to

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the Office of Administrative Hearings. However, to the surprise of all parties and DHS/DDD, the Office of Administrative Hearings issued a short letter claiming it does not hear this type of case and does not have jurisdiction, so there will be no hearing scheduled. Because the Office of Administrative Hearings would not hear the case, the CSP treated the letter as a final decision and went forward with its plan to reduce services.

To reiterate, the applicable rules on reduction/termination of services describe how services must continue until a decision is reached following an administrative hearing. The rights information provided by both DDD and the CSPs informs participants of their right to appeal/right to an administrative hearing before services may be reduced or terminated. Taken together, the administrative rules and CSP policy clearly provide for procedural due process. Yet, the office all parties believed would hear the case refused to do so. DHS provided no other immediate options for conducting the hearing to which participants are entitled per the DHS administrative rules. However, DHS has recently located another office, the state's Office of Hearing Examiners, that has agreed to hear this type of case.

Other Programs

It is unclear whether all or some of the same issues come into play when a participant receives services under other programs. There are similar administrative rules pertaining to participants receiving Family Support Waiver Services. ARSD 46:11:09:08 requires, among other things, that participants be provided "Information regarding the appeal process" and "contact information to request a fair hearing." ARSD 46:11:09:24, Right of Appeal, states a participant may appeal ineligibility, termination, or reduction of services. Notice must include the services being reduced or terminated, the reason for the reduction or termination, and the right to appeal to the Division. This rule also contains "stay-put" language identical to that in the CHOICES program, that services must continue until a decision is reached after an administrative hearing.

There are also similar rules pertaining to participants receiving Community Training Services. ARSD 46:11:11:07 provides for appealing a CSP's determination of ineligibility to DDD. There is an added level of appeal, in that the participant may appeal DDD's "determination regarding ineligibility" to the Department Secretary. A participant may then appeal the Secretary's determination by requesting an administrative hearing.

Because of the Division's position that it cannot require a CSP to serve an individual or provide a particular service, it is likely the appeal to DDD of ineligibility, reduction, or termination, as applicable under the Family Support Waiver Services and Community Training Services, is also merely a procedural review. Like with the CHOICES language, a plain reading of the rules would indicate one *can* appeal the actual determination of ineligibility, reduction, or termination to DDD. On further appeal to the administrative hearing level, it is unknown whether the Office of Administrative Hearings would hear the case, or whether appeals under these programs would also go to the Office of Hearing Examiners.

The Need for a Viable Transition Plan

Another major concern with CSPs' ability to reduce or terminate services is the result of the current state of community services in South Dakota. As was reported in Volume 32, Issue 1 of the *South Dakota Report*, it is typical for a CSP to have numerous job openings (average vacancy rate of 17.26%) at any given time due to turnover (direct care turnover rate of 44.64% in South Dakota). In November 2016, there were a reported 465 open direct care positions in the CSP system. CSPs cannot accept new participants if they have insufficient staff, which results in the creation of waiting lists for services, especially residential services. It is very likely that a participant would need to be on a waiting list for anything from several months to perhaps several years before the individual could begin services at a different CSP. When a CSP seeks to terminate services, there is no requirement that a viable transition plan be in place so that the participant has somewhere else to go to receive services. The same issue can arise with a reduction of services when a participant requires residential services, but the CSP is eliminating the residential services. Remember, per ARSD 46:11:03:00(10), participants are guaranteed the right "to be provided choice among waiver services and providers." Participants can hardly exercise that right of choice when there is nowhere to go due to waiting lists at other CSPs.

When a termination date arrives and the CSP places the individual and his or her belongings on the curb, what happens to the participant? If a participant is terminated and no other CSP has an opening or will not accept the participant, the assumption must be that the parent/guardian or other relative will step in to take the participant home and care for the participant indefinitely until he or she is accepted into another CSP. However:

- ◆ What if there are no parents/guardians or relatives willing to take the adult participant?
- ◆ What if the parents are not physically or mentally capable of caring for the participant? Bringing the participant home could result in safety issues and neglect of the participant. It could also result in safety issues for the parents if the participant has significant behaviors.
- ◆ What if a parent would need to quit his or her employment to care for the participant, leaving the household with only the participant's SSI (which is to be spent only on the participant) to live on?
- ◆ What if a participant requires 24-hour care or supervision, meaning someone actually awake 24 hours a day?

In many instances, in addition to promoting the participant's independence, it was these very concerns that caused the parents/guardians to have the participant served at the CSP in the first place. If a parent or relative cannot or will not take the participant home, or the situation would present significant safety issues to the participant or family member, what happens? Does the individual automatically get sent to the State Institution in Redfield? Does the participant get added to South Dakota's homeless population?

The fact that there is no requirement for a viable transition plan before a participant may be terminated from a CSP is a significant problem in the system, given the unlikelihood of immediate openings at other CSPs. Even if openings exist, there

CSP System

(Continued on page 9)

CSP System

(Continued from page 8)

is no guarantee a given CSP will accept the participant. With movement from one CSP to another at a standstill due to waiting lists for the next opening, the requirement of a viable transition plan prior to termination/reduction of residential is needed now more than ever.

Why are Systems in Place in SD?

South Dakota has statutes, administrative rules, and a Division within the South Dakota Department of Human Services to ensure persons with developmental disabilities have rights and are provided needed services and supports in the least restrictive environment. South Dakota laws relating to persons with developmental disabilities are set out at SDCL Title 27B. The purposes of the laws relating to persons with developmental disabilities is set out at SDCL 27B-1-14:

The purposes of this title are to enhance environments and provide supports to enable persons with developmental disabilities to achieve and maintain physical well-being, personal and professional satisfaction, participation as community members, and safety from abuse, neglect, and exploitation; and to promote and safeguard the human dignity, constitutional and statutory rights, social well-being, and general welfare of all persons with developmental disabilities in the state.

SDCL 27B-2-26 sets out rulemaking authority for DHS to set standards for CSPs, the Developmental Center in Redfield, and other nonpublic facilities, services, and supports:

The secretary of the Department of Human Services shall promulgate, pursuant to chapter 1-26, reasonable and necessary rules establishing standards for community service providers, South Dakota Developmental Center--Redfield, and other nonpublic facilities, services, and supports for persons with developmental disabilities and for services and supports to be provided or purchased by the Department of Human Services under this title. Such rules shall be adopted in the following areas:

- (1) Staff requirements, to include orientation, continuing staff development, instruction on positive behavioral supports and medication administration;
- (2) Administration, audit requirements, and record keeping;
- (3) Services and supports provided;
- (4) Client rights and safety;
- (5) Facility fire safety and sanitation requirements;
- (6) Respite care;
- (7) Family support;
- (8) Preadmission Screening/Annual Resident Review (PASARR);
- (9) Such other standards and requirements as are necessary for federal financial participation; and
- (10) Any other services and supports necessary to implement this title.

In addition, SDCL 27B-2-25 requires the secretary of DHS to “promulgate, pursuant to chapter 1-26, reasonable and necessary

rules governing the procedure and conduct of contested cases, including notification of the denial of services.”

South Dakota statutes thus require DHS to create rules granting rights to participants and providing procedures for how contested cases will be handled. The Division of Developmental Disabilities’ Mission Statement and Principles are as follows:

MISSION STATEMENT

To ensure that people with developmental disabilities have equal opportunities and receive the services and supports they need to live and work in South Dakota communities.

PRINCIPLES

1. We will support people to participate in the life of their community.
2. We will honor the importance of relationships with family and friends.
3. We will ensure that quality services are available and accessible.
4. We will work with providers to enhance services while respecting the dignity of risk and the importance of health and safety.
5. We will respect and value cultural diversity.
6. We will be good stewards of public funds.

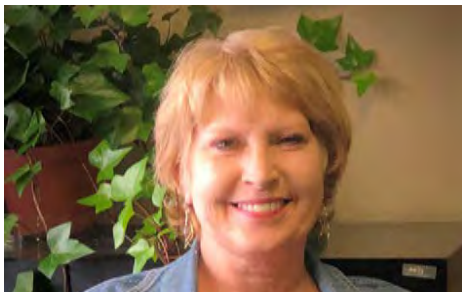
The Division’s mission and principles are a good reflection of what the State wants accomplished for persons with developmental disabilities. However, number three, “We will ensure that quality services are available and accessible,” is unattainable under the current CSP system. The Division cannot ensure any service is available and accessible to an individual if CSPs may freely terminate services without a viable transition plan in place. The Division cannot ensure services are available and accessible to an individual if CSPs will not serve the individual due to either no openings or refusal to serve the individual. The Division cannot ensure services are available and accessible if participants do not have clear procedural due process rights.

Conclusion

DHS has adopted rules intended to provide for a participant’s rights and to provide a process wherein a participant can contest a reduction or termination of services at the administrative hearing level. However, the administrative rules have significant shortcomings. The appeal process they describe (appeal to DDD) does not, in reality, address the subject matter of the appeal. If participants must first appeal “the reduction” or “the termination” to DDD, then DDD must be given the authority to address the actual reduction or termination, not simply whether the CSP provided sufficient notice. If DDD will only review the process, the rules must be amended to explain the limitations at that level of appeal. The rules also must be amended to describe the next level of appeal wherein participants would have the right to an administrative hearing to contest what they believe to be an improper or inappropriate reduction or termination of services. DHS also needs to amend the rules to require a viable transition plan before a CSP may terminate services or reduce services when the service being reduced is residential services. Only with these changes in place can DDD fulfill its mission and principles. DRSD would certainly welcome assisting with this process.

New Administrative Assistant in Sioux Falls

Debbie Ellingson began working for DRSD as Administrative Assistant in the Sioux Falls office on October 2, 2017. Debbie is a native of Sioux Falls. She graduated from Lincoln High School and started her career as an administrative assistant in the insurance industry. She has also worked in the financial and mental



health industries, as well as at part-time jobs in a party store and a floral shop.

Debbie has two grown sons, a granddaughter, a grandson, and two cats and enjoys spending time with all of them. She enjoys gardening, reading, refurbishing antique furniture, and fixing up her home.



One Fact You Should Know About Disability

by Patty Hoffman

Social Security Public Affairs Specialist

Disability is something many people aren't faced with in a direct way. The reality is, a 20-year-old worker currently has a one-in-four chance of becoming disabled before reaching retirement age. That makes Social Security disability benefits something you should learn about and understand.

One fact you should know is Social Security's definition of disability: the inability to work because of a severe condition that is expected to last for a year or end in death.

Social Security disability benefits replace part of your income when you become disabled and are unable to work. Other disability programs may have partial disability or short-term disability, but federal law requires a stricter definition of disability for Social Security benefits. The definition of disability used to qualify you for Social Security Disability Insurance is generally the same one that is used for Supplemental Security Income benefits.

Most people focus on the medical severity of their condition when filing for disability benefits. They provide medical records that show how severe the condition is. Since Social Security defines severity in terms of being unable to work, we also need complete work information.

You can read a description about the process of evaluating whether you can work or not and the severity of your condition in our publication, *Disability Benefits* at www.socialsecurity.gov/pubs/EN-05-10029.pdf, under the section, "How we make the decision." Understanding how we make the disability decision helps you see the importance of information you provide about your condition and the types of work you have done. For more information about how we evaluate your work, you should review this section on our website: www.socialsecurity.gov/disability/step4and5.htm.

Remember, when you provide the details about your condition and your work, you're creating a picture of your indi-

vidual situation. These details show the extent of your disabling condition. These are examples of some of the types of specific information we need about your prior work:

- ◆ Main responsibilities of your job(s);
- ◆ Main tasks you performed;
- ◆ Dates you worked (month and year);
- ◆ Number of hours a day you worked per week;
- ◆ Rate of pay you received;
- ◆ Tools, machinery and equipment you used;
- ◆ Knowledge, skills and abilities your work required;
- ◆ Extent of supervision you had;
- ◆ Amount of independent judgment you used;
- ◆ Objects you had to lift and carry and how much they weighed;
- ◆ How much you had to sit, stand, walk, climb, stoop, kneel, crouch, crawl, balance;
- ◆ How you used your hands, arms, and legs;
- ◆ Speaking, hearing and vision requirements of your job(s); and
- ◆ Environmental conditions of your workplace(s).

Disability is an unpredictable element in our lives. Help us help you by educating yourself about disability benefits, and by providing all the specific information we ask for when you file for benefits. Social Security continues to secure today and tomorrow by providing benefits and financial protection for millions of people throughout life's journey.

Patty Hoffman is the Public Affairs Specialist for ND, SD and Western MN. You can write her c/o Social Security Administration, 4207 Boulder Ridge Road, Ste. 100, Bismarck ND 58503 or via email at patty.hoffman@ssa.gov.

Post-obit ADA Claims

by Thomas E. Simmons*

Stemmie John Guenther oversaw construction projects for his employer, Griffin Construction, until one day in 2012, when his doctor diagnosed him with prostate cancer. He took three weeks off with his boss' permission to undergo treatment, returning to work after it appeared he had been cured. A year later, the cancer returned and metastasized into his lungs. Initially, he deferred treatment and continued working, but his conditions worsened. At one point, Guenther had an episode where he was unable to swallow. He asked for another three weeks leave to pursue radiation treatment. Instead, Griffin Construction fired him and (despite promises to the contrary) cancelled his life insurance and health insurance.

Guenther filed a disability discrimination complaint against his employer with the U.S. Equal Employment Opportunity Commission (EEOC). Twenty months later, a right-to-sue letter was issued, but by then, Guenther had been dead a year. When the administrator of his estate filed suit under Title I of the Americans with Disabilities Act (ADA), the Arkansas district court dismissed the complaint, reasoning that the claim had abated with Guenther's death.¹

In reaching this conclusion, a dense analysis was required. As the district court explained, Guenther's lawsuit "involve[d] complex questions touching on the nature of federalism, the power of the federal courts, and the content of federal common law."²

Lawyers who have attended law school since 1938 could be excused for thinking that the district court was terribly amiss in referencing "federal common law" as a basis for its rationale. Ever since the *Erie v. Tompkins* decision authored by Justice Louis Brandeis, the rule has been that "[t]here is no federal general common law."³ Brandeis reasoned that the uniformity of law which pervasive federal common law had sought to achieve had resulted in just the opposite. The divergence of state and federal law resulted in "mischievous" forum shopping.⁴ To deter this practice, he declared an end to "federal general common law." The key word, here, however, is "general." As the district court deciding Guenther's estate's claim explained: "[T]here is still federal common law, though it is no longer general. It survives in pockets of law involving important federal interests."⁵

Actually, federal common law survives in quite a few pockets. Federal common law lives on in cases affecting the obligations of the federal government, interstate commerce, admiralty, international relations, the preclusive effect of dismissals in diversity cases, ERISA, CERLA, and copyright.⁶ Procedural (as opposed to substantive) matters are also governed by federal, not state law, in federal courts. In recent years, however, federal courts' ability to create rules of federal common law have been curtailed sharply.⁷

The ADA statutory text does not contain a "survival statute" which would clarify whether an ADA employment discrimination claim dies with the plaintiff. Nor is there any

general federal survival statute. Some courts have concluded that whether an ADA claim survives the plaintiff's death turns on state law.⁸ The statute of limitations applicable to ADA claims depends on state law as well.⁹ But, applying the Arkansas state survival statutes to Guenther's claim would result in a dismissal of the claim, as the district court had done.

On appeal, in *Guenther v. Griffin Construction Co., Inc.*, the Eighth Circuit Court of Appeals reversed the Arkansas district court.¹⁰ It emphasized that although the question of whether an ADA claim survives death is a question of federal law, the more difficult task "is giving content" to the issue.¹¹ In giving content to the federal issue, courts sometimes incorporate state law and other times turn to federal common law. Whether a uniform federal common law rule or state law should apply depends on the nature of the issue and the effects on governmental interests.

A rubric for sorting out these policy concerns was articulated in the Supreme Court case of *Kamen v. Kemper Financial*.¹² There, the Court explained that when federal courts are applying a federal statute, any common law rule necessary to effectuate a private suit is necessarily federal in nature. However, the content of the rule need not be simply a product of the federal court's own devising. Filling the interstices of a federal remedial scheme (like the ADA) with uniform federal rules should be avoided unless there is a distinct need. In most cases, state law should be consulted. The question is whether specific objectives of a federal program would be frustrated under a state law application. The district court had carefully considered these concerns and concluded that no "distinct" need was present and, therefore, that the Arkansas survival statute abating the claim should be applied.

In *Guenther*, the Eighth Circuit turned to the ADA's aims – as articulated by Congress – to

'provide a clear and comprehensive national mandate' with 'clear, strong, consistent, [and] enforceable standards' to address the 'serious and pervasive social problem' of disability-based discrimination on a case-by-case basis.¹³

To rid the nation of discrimination against individuals with disabilities, uniformity is essential, lest this mandate be frustrated. Although not a question of statutory construction (the statutes are silent on the question of ADA claim survival), the court still turned to the ADA statutes for guidance. The court emphasized the threat to ADA enforcement if claims abated at death. ADA claims involve disabled plaintiffs, making it more likely that an aggrieved party may die before the case is complete "given the health issue which brings him or her under the statute's protections."¹⁴ The court went on:

Post-obit ADA Claims
(Continued on page 12)

Congress passed the ADA to eradicate discrimination against disabled persons, some of whom may be targeted precisely because of their poor health. A state law allowing claims to abate when the aggrieved party dies impedes this broad remedial purpose.¹⁵

The court was also sensitive to the lengthy path to trial that an ADA claimant with serious health issues may face on account of administrative exhaustion requirements. Guenther's administrative process took almost two years before a complaint could be filed in federal district court. The Eighth Circuit Court of Appeals also observed that if ADA claims were allowed to abate under state law, employer-defendants might be tempted to prolong litigation. Therefore, it concluded, a distinct need for a uniform federal rule was needed.

The traditional federal common law maxim is that claims which are not penal in nature survive the death of the plaintiff; those which are penal in nature do not. Only Guenther's estate's claim for punitive damages could be construed as penal. In view of authority from other courts that a claim for punitive damages will be stricken from a deceased plaintiff's claim under this maxim, the estate's attorneys had conceded that they could not recover punitive damages. Interestingly, however, the Eighth Circuit concluded thus: "We intimate no view as to whether a claim for punitive damages would survive..."¹⁶

¹ *Guenther v. Griffin Const. Co., Inc.*, 161 F.Supp.3d 665 (W.D. Ark. 2016).

² *Id.* at 667.

³ *Erie v. Tompkins*, 304 U.S. 64, 78 (1938) (overruling *Swift v. Tyson*, 16 Pet. 1, 10 L.Ed. 865 (1842)).

⁴ *Id.* at 74.

⁵ *Guenther*, 161 F.Supp.3d at 671.

⁶ Wendy B. Davis, *De Facto Merger, Federal Common Law, and Erie: Constitutional Issues in Successor Liability*, 2008 COLUM. BUS. L. REV. 529, 558-69 (2008); Jay Tidmarsh and Brian J. Murray, *A Theory of Federal Common Law*, 100 NW. UNIV. L. REV. 585, 594-614 (2006).

DRSD Says Goodbye to Long-time Staff Attorney

by Marie McQuay

Brian G. Gosch began what became an almost 20-year career with Disability Rights South Dakota (DRSD) on August 17, 1998. He resigned on October 30, 2017.

Brian was the Staff Attorney and supervisor in the Rapid City Office and later added the responsibilities of Director of the Protection and Advocacy of Beneficiaries of Social Security (PABSS) Program. He worked in each of DRSD's eight component programs and was successful in defending and promoting the rights of people with disabilities in all walks of life. Brian represented numerous individuals in Social Security disability cases and many others with issues such as over-payments and work incentives. He was a tireless and effective advocate for children in South Dakota in the area of special education.

He served for several years on the Mayor's Committee for People with Disabilities and the Youth and Family Services Legacy Advisory Board. Brian served on many other committees as well, including the Elder Abuse Task Force. In addition to his work at DRSD, Brian served in the State Legislature for nine years, which afforded him the opportunity to serve his constituents with disabilities.



Brian G. Gosch

There was no issue that Brian was afraid to tackle, and the results he achieved were exemplary. Brian will be sorely missed, and has left a void in the legal department of DRSD. His dedication, wisdom, calm and caring demeanor, and ability and tenacity to bring about positive results for those he served will truly be missed. Thank you, Brian, for all you have accomplished and done for DRSD. Your many talents and abilities will take you to even greater accomplishments as you pursue a new adventure.

⁷ *Marsh v. Roenbloom*, 499 F.3d 165, 181 (2nd Cir. 2007). "To justify creation of a rule of federal common law, [a party] must show specifically a 'significant conflict between some federal policy or interest and the use of state law.'" *Id.* (citation omitted).

⁸ *E.g., Hutchinson on Behalf of Baker v. Spink*, 126 F.3d 895, 898 (7th Cir. 1997).

⁹ *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1054 (8th Cir. 2003).

¹⁰ *Guenther v. Griffin Const. Co., Inc.*, 846 F.3d 979 (8th Cir. 2017).

¹¹ *Id.* at 982 (emphasis supplied by the court).

¹² *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90 (1991).

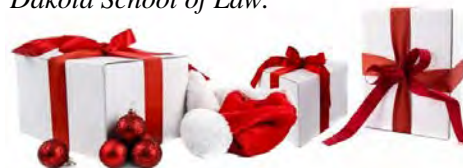
¹³ *Guenther*, 846 F.3d at 983, quoting 42 U.S.C. sec. 12101(a)(2), (b)(1)-(2) (emphasis supplied by the court).

¹⁴ *Id.* at 984.

¹⁵ *Id.*

¹⁶ *Id.* at 986.

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U.S. Army Opens its Doors

by Cole Uecker

The U.S. Army is notoriously selective of who it allows into its ranks. It should be. The job that our military men and women have is arduous, demanding, dangerous, and extremely important. The decisions made by soldiers can have life and death consequences. For this reason, enlistees and officer candidates go

through a barrage of background, physical, and mental exams before they can be admitted to basic training or officer candidate school. For some young men and women with a history of mental illness issues, these assessments have proven to be an impenetrable barrier for entry. However, the Army has recently announced that it is loosening its outright prohibition of admission for some people with a history of some mental health issues.

Access to medical and treatment records help recruiters to better understand the nature of the applicant's mental illness and to see what treatment avenues have been pursued. This allows the Army to make a more reasoned decision based on the individual, rather than to automatically deny access based on a disability label.

New Administrative Assistant in Pierre Office



Kelli Tassler

Kelli Tassler joined the DRSD team on September 25, 2017, as the new Administrative Assistant in the Pierre office. Prior to working at DRSD, Kelli worked in different positions involving special education and at Oahe, Inc. Kelli graduated from Lyman High School in Presho, SD, and attended a couple years of college at Dakota State University with an emphasis in Special Education. Kelli and her husband, John, have 5 children. They live in Fort Pierre. One of Kelli's favorite activities includes watching NFL football with her husband and kids. She also loves to spend time with her kids, nephews, and niece. She loves watching all high school and middle school activities, helping with cheerleading, and finding new things on Pinterest for her husband to do.

Otherwise eligible individuals with a history of self-mutilation tendencies, bi-polar disorder, depression, and drug and alcohol abuse may now seek a waiver in the selection process that could allow them to join the Army when they would have been denied in the past. Lt. Colonel Randy Taylor, Army Spokesman, told USA Today, "The decision was primarily due to the increased availability of medical records and other data which is now more readily available[.] These records allow Army officials to better document applicant medical histories." Vanden Brook, T., "Army lifts ban on recruits with mental health history." *USA Today*, 13 Nov. 2017: Web 13 Nov. 2017.

Disability Rights South Dakota supports any effort to expand opportunities for all people who can fulfill the essential functions of a job based on their individual qualifications. This step that the Army has taken is encouraging because it opens the door for so many people who wish to serve their country, while breaking through stigmatic barriers formerly imposed on people with certain mental health histories. People should be judged on their own merits and capabilities, not on stereotypes thrust upon them. If persons with a history of mental illness can rise to the challenge, they now have the opportunity to be called soldiers.



New Advocacy Services Representative in Sioux Falls

Katie Demaray became the newest Advocacy Services Representative in the Sioux Falls office October 2, 2017. Katie has previously worked with Capital Area Counseling in Pierre and Keystone Outreach Treatment in Sioux Falls as an Addiction Counselor. She is currently attending the University of South Dakota and will graduate in the summer of 2018 with her B.A. in Political Science.

Katie grew up in western Nebraska, but has strong family ties to South Dakota. She moved to Pierre in 2008. Her husband, Matt, was transferred to Sioux Falls in 2014 and they have enjoyed making the Sioux Falls area their



Katie Demaray

home. Katie and Matt have two children, Laurel (2) and Nash (5 months).

Partners - Changing Systems One Class at a Time

Year 26 Began in November

by Sandy Stocklin Hook

There are twenty individuals from ten South Dakota counties in the Partners in Policymaking Class of 2018 (Year 26). This year's class has seven self-advocates and 13 parents. Class participants include Jacki Bosma, Aberdeen; Sarah Carlson, Canton; Vincent Cloud Eagle, Eagle Butte; Sheena Drey, Amber Finnesand, Mary Meyer, and Jennifer Olson, Sioux Falls; Gail Eichstadt, Carl Eichstadt, Tanya Loomis, Brian Poelstra, and Genevieve Row, Pierre; DeAnne Friese, Wessington Springs; Shanel Kube, Loretta Sierra, and Megan Waltner, Yankton; Bridget Leiseth, Hazel; Lee Anne Runnels and Randy Runnels, Mobridge; and Kelli Tassler, Ft. Pierre.

Partners in Policymaking is an innovative leadership and 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 both during the training and 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 testimony presentation skills, and other learning activities. Each participant must complete monthly homework assignments.

When choosing the participants for each class, the selection committee uses criteria including representation from var-

ying ethnic and cultural backgrounds, different geographic regions of the state, and a mix of parents and consumers. The selection committee works to assure that the participants are representative of the population of the state and seeks members for the class who are from un-served and under-served areas of the state.

The Class of 2018 met in November at the Governors Inn in Pierre for Session One. Tim Neyhart, DRSD Executive Director, and Sandy Stocklin Hook, Partners in Policymaking Coordinator, both of Pierre, welcomed the class to Partners and spoke about DRSD.

Dennis Hook of Pierre opened the session with a fun ice breaker, literally throwing things at the class! Throughout this exercise, participants learned each other's names and became more comfortable interacting with each other, while learning that it is okay to be afraid of change, but if change does not happen, progress is not made.

Brenda Smith (Year 5) from Sioux Falls spoke on Person Centered Thinking. The class had the opportunity to develop a one-page profile and to determine the difference between what a person needs and what a person wants.

Kathie Snow of Texas challenged the class to think "different." Snow stressed



Megan Waltner and Sarah Carlson

Partners in Policymaking
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Partners in Policymaking

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the importance of Partners Top 10 Values and how car pooling and room sharing all add to the networking process of Partners. She spoke of People First Language, putting the person first and the disability second, and how it helps to change attitudinal barriers. "Labels are used for services and for nothing else. People First Language will help change the attitudinal barriers that face people with disabilities on a daily basis." Snow introduced the class to the history of Partners in Policymaking and the positive impact it can have on their lives. Snow stressed the importance of fulfilling their responsibilities to the program and the empowerment and connections gained by being a Partner. "You have 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."

Neyhart spoke on the History of Disabilities and History of the Parent and Independent Living Movement, including the landmark decisions that affect individuals with disabilities. Neyhart stated, "Building supports in local communities is the first step in achieving inclusion and it is everyone's responsibility. While the past has fostered discrimination and segregation against people with disabilities and despite some improvements, discrimination and segregation still exist and it is YOUR job as a Partner to change this!"

Six Partners graduates shared how Partners changed their lives. Lisa Merchen (Year 16) of Spearfish stressed the importance of networking. "I did Partners because first and foremost I am a mom of a son who has Down syndrome, but I gained so much - friendships, sup-



Mary Meyer and Brian Poelstra

port, knowledge, and I learned to forgive myself. Partners is about sharing our stories, positive conversation and working forward." Max Merchen (Year 21) of Spearfish shared: "I learned to move forward, how to have patience, persistence, and how to get involved. I learned to do it right!" He also encouraged the class to get to know each other "and not just those in your immediate class but also the 600+ graduates throughout the state."

Year 15 graduate, Julie Yellow Cloud of Porcupine, explained that Partners gave her a voice and she is sharing her voice throughout her reservation, helping families to learn to advocate for their children. "Advocating on a Tribal Nation is totally different than in an urban area, but Partners gave me the knowledge and voice to

educate others and to make a difference," stated Yellow Cloud.

Monique Runnels (Year 23), a parent from Mobridge, expressed the importance of listening to everyone's story and challenges because "everyone has something to offer and even if you don't realize it at the time, you will learn from each of your classmates."

Year 25 graduate, Lisa Stanley of Pierre, spoke of the importance of attending each and every session, as one session leads to the next. Ashlee Rathbun (Year 25), Ft. Pierre, told the participants to enjoy each session, enjoy your classmates, and enjoy yourself.

Sandy Stocklin Hook of DRSD's Pierre office is in her 21st year as Coordinator of the Partners in Policymaking training program. Assisting in Year 26 is Lori Douville of Chamberlain. Douville is a Partners volunteer and a Year 7 graduate.

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



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CHANGE SERVICE REQUESTED

In Memory of Clarence Otto Pigney

09-22-61 - 11-04-17

Clarence was a Year 13 (2005) graduate of SD Partners in Policymaking and was a member of DRSD's former PADD Advisory Council. He was involved with the People First organization in Vermillion and was elected the group's president at one point. Clarence utilized his Partners training for the remainder of his life by advocating for himself, other persons with disabilities, and for systems change for persons with disabilities. Clarence was recognized for his contribution to the effort to end the state mandated co-payment for people receiving Home Community Based Waiver Services. His advocacy helped to encourage the State Legislature to appropriate approximately one-half million dollars a year to the waiver program. This appropriation ended the co-payment or out-of-pocket payments toward their services. This change allowed people to work more hours and spend more time in the community. His advocacy work will live on. His obituary read as follows:

Clarence Otto Pigney was born September 22, 1961, in Orange County, California. As a young child, he moved to Rapid City,

Calendar

- ◆ **April 27-28, 2018** - Partners in Policymaking Graduation Weekend, Ramkota, Sioux Falls
- ◆ **April 27/28, 2018** - DRSD Legal Clinic and Presentations, TBA

SD with his family. As an adult, Clarence made his home in Vermillion, SD.

Clarence kept busy working at both USD Aramark Food Service and Taco Johns for many years. He participated in the South Dakota Partners in Policymaking organization for numerous years, along with serving on the Division of Developmental Disabilities Statewide Financial Workgroup, advocating for system-wide changes for the benefit of other people with disabilities and community support providers.

When not working, Clarence kept busy every minute of every day with his many interests, including gardening, canning, baking, sewing, quilting, fishing, bike riding and taking care of his dear cat, Nosh. Clarence will also be remembered for hosting his annual holiday dinners for those who did not have a place to go for the holidays. He had a very generous spirit and, even in the last weeks of life, was making arrangements to



give his treasured personal items to his friends and family. He advocated for himself and for people with disabilities right up to his last day.

Clarence is survived by his father and stepmother, Alvys and Elsie Pigney, of Rapid City and his brother, Mike, of Willmar, MN. He also will be missed by his many friends and coworkers in Vermillion.