

Spring 2013
March, April, May

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Circuit is a quarterly publication of South Dakota Parent Connection providing stories around a central theme for each issue. Circuit is intended to be a reference publication packed with information and is provided electronically and in printed format.

South Dakota Parent Connection also produces an electronic semi-monthly newsletter (weConnect) with current events and time-sensitive information.

Circuit

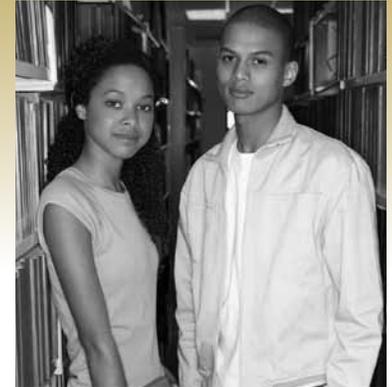
Offering information and assistance to parents and families caring for children with a disability or special need.

In this Issue:

What Parents Should Know About Reaching Age 18

*"Promise me you'll always remember:
You're braver than you believe,
stronger than you seem,
and smarter than you think."*

A.A. Milne, Author
Winnie the Pooh Books



Age 18 Brings Changes

by John A. Hamilton, South Dakota Advocacy Services

Nationwide, most youth look forward to the day they become "legal" adults, meaning reaching the "age of majority." The age of majority is determined on a state-by-state basis and South Dakota has set it at eighteen. When youths reach the age of majority, their legal relationship with their parents and society changes dramatically, probably in several ways in which youth (and parents) are unaware. Additional changes, which are described in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), take place for students with disabilities. The IDEA sets out how a number of "parental rights" will transfer to the student upon reaching the age of majority, including students who are incarcerated in an adult or juvenile correctional institution. **No later than a student's seventeenth birthday in South Dakota, the IEP must document that the student has been informed of the rights (under IDEA) that will transfer to the student at age eighteen. In addition, both students and parents must be given notice when the transfer of rights occurs.**

Turning Age 18 and the IEP

Parents and students should understand that the following parental rights will transfer at age eighteen:

- ◆ The student becomes solely responsible for his or her educational program, not the parents or guardian (guardianship of a minor would end when the student turns age eighteen unless the guardianship order states otherwise);
- ◆ The student is responsible for reviewing and/or seeking copies of school records. Students must understand they have a right to review all educational records and request a copy (and be informed whether there are reasonable copying charges);
- ◆ The student, not the parents or guardian, will receive notices of IEP Team

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Beth Haug Joins SDPC Team

Beth Haug, Hermosa, has joined SDPC as Outreach Coordinator. Beth is a graduate of Partners in Policymaking and has served on the Board of Directors of the South Dakota Board of Vocational Rehabilitation, South Dakota Brain Injury Alliance, Custer County Children's Center and Custer School Special Education Parent Advisory Group. Most recently, Beth served as a Service Coordinator for Birth to Three Connections, serving Custer and Fall River counties in western South Dakota.

Beth and two of her sons survived an auto accident in 1986 that left all with traumatic brain injuries. Beth has personally experienced the challenges that arise when attempting to access needed services and supports in a rural community to meet the health, education and other needs of their family.

SDPC Circuits Available in Spanish

The following issues of *Circuit* (*Circuito*) are now available in hardcopy in Spanish:

- **Accessing Services and Supports**
- **Evaluations**
- **Safety**
- **Shame, Blame and Resiliency**

Circuito and *La Guia de Recursos para Familias* are also available at www.sdparent.org on the En Español page.

Please contact SDPC to receive copies of these resources or to request to be added to the mailing list.

Other Considerations at Age 18

Health Care

Health care providers must protect every patient's right to privacy and consent. In the absence of legally arranged guidance, this may prevent parents from getting medical information, speaking with the doctor, or making medical decisions for their child aged 18 or above. For young people who may be unable to make medical decisions independently, or for those with medical conditions that may be intermittently incapacitating, health care durable powers of attorney, conservatorships or waivers of confidentiality for individual health care issues are options that can 1) support a young person's decision making while, 2) providing parents the legal right to obtain information and make decisions for their child should an emergency arise.

Parent Tip:

Young adults should keep an ICE (in case of emergency) card in their wallet which lists the names of all approved emergency contacts, health insurance information and all known allergies. This information should also be stored in their cell phone under the name ICE.

Join the free April 11 parent education session "Guardianship – One Size Does Not Fit All" to learn more about options for supporting youth with disabilities or special health care needs. (See page 7)

Supplemental Security Income (SSI) and Medicaid

Social Security provides SSI disability benefits to qualifying individuals with little or no income and limited resources. In South Dakota, individuals who qualify for SSI benefits of at least \$1 will also receive Medicaid insurance.

Social Security determines disability for adults (18+) by different standards than those used for children. Adult eligibility is determined by the ability to be substantially and gainfully employed while child disability is determined by a child's functional ability. For children receiving Social Security benefits, families should anticipate a re-determination process at the time of turning 18 years of age, using the adult criteria.

Families of children with disabilities are often ineligible for SSI due to required reporting of all household income. When the child becomes an adult at age 18, only the income and resources of the applicant (child) are considered, regardless of where they live or with whom. An adult application for Social Security benefits can be initiated at any time following the 18th birthday or not more than three months before the age of 18.

Please visit www.sdparent.org, (How We Help, Resources) for more information on SSI and applying for Social Security benefits.

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Medicaid/CHIP

At age 19, low income youth in South Dakota who have received Medicaid/CHIP insurance will become ineligible. Alternate insurance/financing should be identified. Options families can explore include private insurance, SSI (Medicaid for adults with disabilities), Health KiCC (see below), and low cost community health/mental health/dental health clinics. Please explore the **Family Resource Guide, Paying for Needed Services** at www.sdparent.org for additional resources or contact SD Parent Connection.

Health KiCC

This program provides financial assistance for medical appointments, procedures, treatments, medications and travel reimbursement for South Dakota youth through age 20 with a wide range of chronic medical conditions who meet financial guidelines. Please call 800-305-3064 or visit <https://doh.sd.gov/FamilyHealth/child.aspx> for full information.

Family Educational Rights and Privacy Act (FERPA)

Parents have the right to inspect and seek to amend their children's educational records, and control (with some exceptions) how those records are released to other individuals. Examples are grade reports, transcripts, and most disciplinary files. Those rights transfer to students when the student turns eighteen, or is attending any post-secondary educational institution. When the rights under FERPA transfer, the student must provide written permission before parents can be given access to their student's records. However, there are exceptions. If a student is enrolled in both a high school and a postsecondary institution, the two schools may exchange information on that student. If the student is under 18, the parents retain FERPA rights at the high school and may inspect and review any records sent to the high school by the postsecondary institution. Also, although the rights under FERPA have now transferred to the student, a school may disclose information from an "eligible student's" education records to either of the parents of the student, without the student's consent, if the student is claimed as a dependent by either parent for tax purposes. Neither the age of the student nor the parent's status as a custodial parent is relevant. If a student is claimed as a dependent by either parent for tax purposes, then either parent may have access under this provision. Another exception allows disclosure to parents of a student's violation of the use or possession of alcohol or a controlled substance if the student is under age 21, or is claimed as a dependent regardless of age. (34 CFR § 99.31(a)(8).) www2.ed.gov. For more information, please see FERPA FAQs at www.sdparent.org, (**How We Help tab, Resources (Transition – Post Secondary)**).



March, April, May 2013

Next Sibshops Held In Conjunction with Partners in Policymaking

The next Sibshops on **Saturday, April 27** at the Ramkota Hotel in Sioux Falls will be held in conjunction with the Partners in Policymaking Year 21 Graduation and Continuing Education Conference.

Sibshops is designed specifically for brothers and sisters, ages 6-12, of children with special needs or disabilities to enjoy friendship, activities and learning together. Children of Partners in Policymaking graduates who are siblings of children with special needs are encouraged to participate in the Sibshops experience.



Activities begin at 10:30 a.m. (lunch included) and conclude at 1:30 p.m.

"Expressing Feelings with Creativity" (such as music, art, writing or other creative exercises) is the theme of the April Sibshops.

Pre-registration is required. To register, contact SD Parent Connection at 1-800-640-4553, or sdpc@sdparent.org or register online at www.sdparent.org (**Family Life, Sibling**).

Sibshops is co-sponsored by South Dakota Parent Connection, Children's Care Hospital and School and Here4Youth.

If you would like to help endow the Sibshops program in South Dakota, please contact Elaine Roberts or Cheryl Crase at 605-361-3171 or 800-640-4553.

Reaching Age 18 Brings Big Changes

(Continued from Page 1)

- meetings and must contact the school if the day and time do not work and the meeting needs to be rescheduled;
- ◆ The student, not the parents or guardian, is responsible for attending and participating in IEP Team meetings;
- ◆ The student may, but is not required to, invite his or her parents to IEP Team meetings, as parents no longer are mandatory IEP Team members when the student turns age eighteen;
- ◆ The student is responsible for inviting other people to IEP Team meetings, such as an advocate, Navigator, or other desired professionals;
- ◆ The student is responsible for requesting evaluations, if needed, and signing consent for all evaluations sought by the district or requested by the student;
- ◆ The student is responsible for determining whether he or she disagrees with any evaluations completed by the district and whether to engage his or her right to independent educational evaluations;
- ◆ The student is responsible for consenting to persons from participating agencies participating at IEP Team meetings and for consenting to any release of information;
- ◆ The student is responsible for determining whether he or she agrees with IEPs the IEP Team develops, and for deciding whether to request mediation or contest IEP provisions (and/or identification, eligibility, placement, evaluations, or other aspects of a free appropriate public education) through filing a Due Process Complaint;
- ◆ The student is responsible for locating and hiring legal representation if desired; and
- ◆ The student is responsible for addressing discipline issues relating to his or her own behaviors.

Beyond the IEP

While significant rights transfer to students with disabilities under IDEA at age eighteen, they are essentially the “tip of the iceberg” compared to the rights that transfer or otherwise attach at age eighteen for all youth. There is no specific IDEA requirement that districts inform students and parents of the non-special education rights that attach at age eighteen; nonetheless, IEP Teams should provide students with this information in some form because they encompass part of the transition to adulthood. Because IDEA’s intent is to ensure students with disabilities successfully transition to appropriate adult “outcomes,” then informing students of the universally applicable rights that attach at age eighteen seems like a “no-brainer” as part of a good transition plan.

At age eighteen, students have the following rights (this list not intended to be all-inclusive):

- ◆ To vote;
- ◆ To make a will;
- ◆ To make a power of attorney;
- ◆ To make end-of-life decisions;
- ◆ To be an organ donor;
- ◆ To sign an enforceable contract (e.g., rent an apartment, purchase a house, take out a loan, purchase a car);
- ◆ To obtain medical treatment without parental consent;
- ◆ To enlist in the armed forces without parental consent;
- ◆ To apply for credit in their own name;
- ◆ To be completely independent of parental control; and
- ◆ To get married without parental permission.



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Are You and Your Child Ready?

And the following responsibilities:

- ◆ Your parents are no longer required to support you;
- ◆ You may be sued for breaching contracts you signed;
- ◆ You are responsible for having auto insurance;
- ◆ You are responsible for your own car accidents;
- ◆ You are eligible for jury duty;
- ◆ You will be tried as an adult for committing a crime; and
- ◆ If you are male, you must register for the selective service.

Is Guardianship Appropriate?

Parents who believe, due to their child's disability, that their child will not be able to make some or all types of decisions on his or her own behalf may want to consider guardianship. Parents who believe a guardianship is needed should take steps to ensure a guardianship is in place when the student turns age eighteen. Otherwise, regardless of the student's actual capabilities, the student will become his or her own guardian and all rights will transfer at age eighteen (until such time a court determines a guardianship is needed and such guardianship is in place). Becoming a guardian/conservator is not something to take lightly, as there are several statutory responsibilities.

Because guardianship is not addressed in federal law, each State must create its own requirements and procedures. Guardianship requires a legal proceeding, with several procedural requirements that must be followed under South Dakota law before a court will grant a guardianship. Parents seeking to have a guardianship in place when their child turns age eighteen should obtain legal advice/representation at least six months prior to their child reaching age eighteen.

South Dakota's statutes allow for a number of different options. A full guardianship allows the guardian to make decisions for the protected person in many areas, such as making medical and educational decisions, determining where the protected person lives, etc. A conservator, on the other hand, is appointed by the court to be responsible for managing the estate and financial affairs of a minor or protected person. Oftentimes, the same person fills both roles. South Dakota laws also provide for the court appointing a limited guardian, which means the responsibilities for the personal affairs of a minor or protected person are more narrow as specified in the order of appointment. For example, a court may limit the guardian's authority to making only educational decisions if the protected person is found capable of making decisions in all other areas. A court can similarly specify in the court order a limited conservator, where responsibilities for managing the estate and financial affairs of a minor or protected person are specifically set-out.

South Dakota law also provides for the appointment of a temporary guardian/conservator, which is limited to six months for a minor, and 90 days with one extension for adults. A temporary guardianship/conservatorship may be used in situations where there is not an anticipated need for an ongoing guardianship, such as where the protected person was in an accident or has a medical condition where improvement is possible in the short-term. A temporary guardianship is easier to put in place, so it works well in emergency situations (where a guardianship is needed, but there is not time to go through the required procedures for a regular guardianship to be put in place).

The statutes also provide the flexibility for courts to appoint joint guardians/conservators. For example, a brother and sister may be appointed joint guardians over their brother, or both parents over their son. The laws also allow for the appointment of successor guardians/conservators, meaning persons or entities that will assume the guardian role if something should happen to the current guardian.

While typically one immediately thinks of parents becoming guardian, others may petition for guardianship or conservatorship if they are capable of providing an active and suitable program and are not providing substantial direct care services or financial assistance to the minor or protected person other than the services of the guardian/conservator.



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Important Age 18 Information

Regardless of Disability, Young Men Are Required to Register with Selective Service.

Men ages 18-25 living in the US must register with Selective Service within 30 days of their 18th birthday. You may be denied benefits or a job if you have not registered. Registration may be done at any US Post Office or online at www.sss.gov/default.htm. Call the Selective Service at 888-655-1825 or 847-688-2567 (TTY).

Establishment Program

This program in the SD Department of Human Services assists families or friends of adults with developmental disabilities who reside in South Dakota with legal costs up to \$500 associated with establishing a guardianship or conservatorship. Visit <http://dhs.sd.gov/gdn> or call 800-265-9684 for more information.

For information about transitioning to adulthood visit www.sdparent.org (**Family Life, Resources, Transition to Adulthood**).

Reaching Age 18 Brings Changes

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Appointment of a guardian is a significant deprivation of rights and courts will not grant a petition for guardianship if lesser-restrictive options are available or if there is not sufficient proof a guardianship is needed. In most instances, for a guardianship to be ordered, there must be a current evaluation report accompanying the petition. The purposes of the evaluation are to have sufficient information before the court to determine whether the person needs a guardianship or conservatorship, and if so, whether full or limited, provide the court information on whether the provision of additional services would avoid the necessity of an appointment, assist the guardian or conservator in planning for the needs of the person by reviewing aspects of the person's life, including medications, and help the court determine whether the person alleged to need protection will be able to attend the hearing. The person alleged to need protection has the right to disagree with (contest) the procedure and who will be the guardian/conservator.

Significant in South Dakota law is that appointment of a guardian/conservator does not constitute a general finding of incompetence unless the court orders. The protected person retains all rights that have not been granted to the guardian/conservator. Without prior court authorization, the guardian cannot change the residence of a minor or protected person to another state, terminate or consent to termination of a minor's or protected person's parental rights, initiate a change in the minor's or protected person's marital status, or revoke or amend a durable power of attorney of which the protected person is the principal.

As guardianship/conservatorship is a legal proceeding, parents (or others) seeking to become guardian/conservator will need an attorney to assist them in this process. There are costs involved and they should expect to spend \$600.00 or more.

Conclusion

The transfer of rights at age of majority is a life-altering event and one that requires significant planning. If parents and students are not receiving the information discussed above from their IEP Team, they should ask for that information. If parents or youth have questions about the transfer of rights at age of majority please contact South Dakota Advocacy Services at 1-800-658-4782.



Spring To Do List ...

- **Arrange for ESY.** Extended School Year is special education or related services provided to students with an IEP when school is not in session, such as summer or other breaks. For more information on ESY visit www.sdparent.org (**How We Help, Resources, The School Year**).
- **Check Out Summer Camps and Activities.** Visit www.sdparent.org (**Helpful Links, Camps and Activities**).
- **Plan for Child Care.** Visit www.sdparent.org (**Family Life, Resources, Respite and Childcare**) for tips to help families with children with special needs navigate the summer break.

If you do not have computer access, contact SDPC at 800-640-4553 for copies of these resources.

Available online and at DDN sites....

Upcoming Parent Education Sessions

Focus on Reaching Age 18 Issues

The **FREE** Parent Education and Support sessions are held each month throughout the school year on the second Thursday of the month at 7 p.m. (CT) or 6 p.m. (MT) through Dakota Digital Network (DDN) video conferencing at 7 p.m. CDT (6 p.m. MT). Sessions will also be available **LIVE via the Internet** with the ability to ask questions of the presenter through a chat feature.

Videos of the presentations are archived at www.sdparent.org (**Family Life, Parent Education Series**) for viewing at any time. The sessions are appropriate for parents and those working with or supporting children with cognitive, developmental, emotional/behavioral or physical special needs.

Upcoming Sessions

March 14 – SSI - Common Questions and Concerns

Many families with children and youth with developmental disabilities or special health care needs may be eligible for Supplemental Security Income. Nearly 2,500 children under the age of 18 received SSI benefits in South Dakota in 2011 (US Social Security Administration). Low income families may be eligible for SSI benefits available to children and youth under the age of 18 who have a physical or mental impairment that has lasted for a period of at least 12 months preventing them from completing functional tasks. This session will address common concerns, issues, and problems that arise for SSI beneficiaries.

April 11 – Guardianship – One Size Does Not Fit All

If you are the parent or family member of a person with a disability, you may find yourself making decisions on his/her behalf at some point. This is referred to as substitute decision making and each state sets its own rules regarding what types of substitute decision making are allowed. In South Dakota, there are several types of substitute decision making; guardianship, power of attorney, and conservatorship are examples. In this session Robert J. Kean, Executive Director of South Dakota Advocacy Services, will introduce each type and outline the responsibilities associated with them. Time is scheduled for questions and discussion.

May 9 - Connection Before Correction – Strategies for Parents of Children with Challenging Behavior

Punishment, lecturing, nagging, scolding, blaming or shaming create fight, flight, or freeze. Research shows that we cannot influence children in a positive way until we create a connection with them. Sometimes we have to stop dealing with the misbehavior and first heal the relationship. This session will help parents and caregivers of children with challenging behavior learn to build a more positive relationship and differentiate between consequential and inconsequential behavior.

DDN Sites:

Rapid City at School of Mines, 501 E. St. Joseph Street Classroom Building;

Salem, McCook Central School, 200 East Essex Avenue.

Spearfish at Black Hills State University,

Sioux Falls at University Center, 4801 N. Career Avenue;

Contact SDPC at 1-800-640-4553 with questions or visit www.sdparent.org (**Family Life, Parent Education Series**).





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Please let us know if you have an address correction. Thank You.

Visit Us at
www.sdparent.org

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Thank You Sioux Falls Ford!



SDPC Associate Director Lisa Sanderson (left) and SDPC Executive Director Elaine Roberts (right), accept the keys to **TWO** vehicles from Tim Hilber (center), Sioux Falls Ford Chief Financial Officer. Tim facilitated a five year use lease of a **2010 Mercury Milan** and **2010 Ford Fusion at no cost to SDPC**. The donation has an annual value of \$6,834!

Elaine noted, "Tim Hilber was eager to assist when contacted by Lisa Sanderson to explain the challenges of van repair costs for SDPC and that our staff was nervous about taking the vans on the road. The vehicles look great, provide safety for our staff and are fuel efficient."

For more than a decade, Sioux Falls Ford, Inc. has provided South Dakota Parent Connection with leased vehicles at no cost to ensure that SDPC staff can travel safely across the state. Originally, SDPC had the use of a Windstar van which the SDPC board later purchased. In 2004 Sioux Falls Ford provided an additional Freestar van and the two vehicles have traveled the state. SDPC staff delivered resources and training utilizing the vans in communities such as Sisseton, Rapid City, Mission, Yankton, Pierre to name a few. The vans traveled more than 65,000 miles the last five years and were showing signs of wear.

The contents of this newsletter were developed under a grant from the U.S. Department of Education and U.S. Department of Health and Human Services. However, these contents do not necessarily represent the policies of the Department of Education or Department of Health and Human Services and you should not assume endorsement by the Federal Government. Products and services described herein are not endorsed by South Dakota Parent Connection, the U.S. Department of Education, Department of Health and Human Services or by the Federal Government. The Parent Training and Information Center is funded by the U.S. Department of Education, Office of Special Education Programs (OSEP). The Family-to-Family Health Information Center is funded by a grant through the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau, Division of Services for Children with Special Health Needs. This grant program was established by the Family Opportunity Act of 2005 and amended by the Patient Protection and Affordable Care Act of 2010.