INTRODUCTION

What Parents Should Know . . . About Special Education in South Dakota was created in response to requests from parents, parent groups, advocacy groups, and professionals who had used and enjoyed a previous publication entitled, “A Guide to Special Education in South Dakota,” published by the State Office of Special Education prior to the passage of the Individuals with Disabilities Education Act of 1997. At that point, the old publication became obsolete and nothing had been created to take its place until now.

OUR INTENT: USER FRIENDLY

What Parents Should Know . . . About Special Education in South Dakota provides readers with a detailed explanation of current federal special education law. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) was signed in December 2004 and went into effect on July 1, 2005. The federal regulations were published in August 2006 and went into effect in October 2006. This book also provides several references to the current Administrative Rules of South Dakota where they differ significantly from the federal requirements. Parents and professionals consistently comment that the special education laws and regulations are difficult to understand and apply. Our intent when we began this project was to try to make the laws understandable and user-friendly, while not ignoring the specific language of the federal regulations. The result is this comprehensive, easy-to-read booklet. Suggestions for additional information to be included in future editions are welcome.

HOW TO USE THIS BOOK

We begin with a description of the individuals/agencies who contributed to the writing and editing of this book, contact information, a table of contents, and frequently-used definitions and acronyms. What Parents Should Know . . . About Special Education in South Dakota is then divided into thirteen (13) additional sections. Each page within these sections contains a general section heading and under each general heading is a detailed subheading. All but a handful of the subheadings refer to specific federal regulations.

For each subheading, we have included a box entitled “What the Federal Regs. Say.” This box contains actual language from the federal regulations and the citation to the specific regulation(s). IDEA (the federal statute) is contained at 20 U.S.C. §1400 et seq. The federal regulations to IDEA are contained at 34 C.F.R. §300.1 et seq. Thus, when the book cites to, for example, “Sec. 300.324,” this is a citation to 34 C.F.R. §300.324. Occasionally, other sources are also cited herein. The next portion, “What the Regulations Mean,” contains an easier-to-read interpretation of the regulations. The “What Parents Should Know” box provides useful additional information regarding practical application of the regulation. Where the Administrative Rules of South Dakota (ARSD) differ significantly from the federal regulations, we have included a portion entitled “In South Dakota” within
an outline of the State, where those differences are stated or interpreted. Occasionally, we have also included a “TIP” box to provide readers with additional practical information. This format is utilized consistently throughout this book. By dividing the book into several sections and by providing a detailed Table of Contents, readers can quickly locate the information they need regarding a particular issue without wading through pages of unrelated text.

ACKNOWLEDGEMENTS

What Parents Should Know . . . About Special Education in South Dakota is the end product of hundreds of hours of work over a nine-year period by seven individuals from four organizations:

Disability Rights South Dakota
(formerly South Dakota Advocacy Services)
John A. Hamilton
Legal Affairs Director
Valorie J. Ahrendt
Former Advocacy Services Representative

South Dakota Parent Connection
Lynn Boettcher-Fjellanger
Former Executive Director
Nathan Anderson
Former Coordinator, South Dakota Navigator Program

South Dakota Center for Disabilities
Dawn Regula
Heather Stettnichs
Former Dir. of Community Education & Information

Transition Liaison Services Project
Bev Petersen
Transition Liaison

This edition was written by John A. Hamilton, with assistance by Valorie J. Ahrendt, Disability Rights South Dakota (formerly South Dakota Advocacy Services). Committee members Nathan Anderson, Heather Stettnichs, and Bev Petersen provided editorial assistance on all aspects of the project.

Thank you to Ann Larsen, former South Dakota Special Education Programs Director, Lynn Boettcher-Fjellanger, former Executive Director of South Dakota Parent Connection, Elaine Roberts, former Executive Director of South Dakota Parent Connection, Robert J. Kean, former Executive Director of South Dakota Advocacy Services, and Tim Neyhart, Executive Director, Disability Rights South Dakota, for also reviewing and commenting on this publication.

The January 2018 reprint of What Parents Should Know . . . About Special Education in South Dakota was made possible through funding from the SD Department of Human Services, Division of Developmental Disabilities, with additional financial support from the SD School for the Deaf Foundation.

Reprinted January 2018. 2,200 copies were printed at $4.55 per copy by Merriman Printing, Inc., Pierre, SD.
RESOURCES

The following are descriptions of the agencies that contributed to this publication:

**Disability Rights South Dakota (DRSD)** - (formerly South Dakota Advocacy Services)

DRSD is the State's designated Protection and Advocacy (P&A) System. DRSD's mission is to protect and advocate the rights of South Dakotans with disabilities through legal, administrative and other appropriate remedies. DRSD provides services to eligible persons with disabilities ranging from information and referral to case advocacy and legal representation. DRSD consists of eight component programs, each serving a distinct population based on federal legislative mandates and program priorities. DRSD's contribution to this book was funded in part by the Administration on Developmental Disabilities (ADD) and the Center for Mental Health Services (CMHS).

**Contact Information:**
Disability Rights South Dakota
221 S. Central Avenue, Suite 38
Pierre, SD 57501
(605) 224-8294 or 1-800-658-4782; Fax: (605) 224-5125
E-mail: drsd@drsdlaw.org; Website: www.drsdlaw.org

**South Dakota Parent Connection (SDPC)**

South Dakota Parent Connection, Inc. is South Dakota's Parent Training and Information Center (PTI). It is a non-profit organization providing information, training, resources, linking of families, and assistance to parents of children with disabilities or special health care needs throughout South Dakota. Its mission is “empowering families... empowering lives.” South Dakota Parent Connection believes that when parents, educators, and service providers work together, children have unlimited potential for success! One of its programs is the South Dakota Navigator Program, whose purpose is to work with both school personnel and parents to achieve the following goals: 1) improve communication; 2) build partnerships; and 3) resolve disagreements locally and voluntarily.

**Contact Information:**
South Dakota Parent Connection
3701 W. 49th St., Suite 102
Sioux Falls, SD 57106
605-361-3171 or 1-800-640-4553; Fax: (605) 361-2928
E-mail: sdpc@sdparent.org; Website: www.sdparent.org

**South Dakota Center for Disabilities**

The Center for Disabilities is a division of the Department of Pediatrics at the Sanford School of Medicine of The University of South Dakota. The Center for Disabilities is South Dakota’s University Center for Excellence in Developmental Disabilities Education, Research and Service (UCEDDERS) sometimes referred to as University Centers for Excellence in Developmental Disabilities (UCEDD). The Center for Disabilities receives core funding from the Administration on Develop-
mental Disabilities (ADD), which is housed within the United States Department of Health and Human Services. To accomplish its mission, the Center for Disabilities conducts diverse yet integrated activities through academic training, community service, information dissemination, and research/evaluation, all reflecting state-of-the-art knowledge and experiences in the area of disabilities.

Contact Information: Center for Disabilities
Sanford School of Medicine of The University of South Dakota
1400 W. 22nd Street
Sioux Falls, SD 57105
(605) 357-1439; Website: www.usd.edu/cd

South Dakota Transition Services Liaison Project (TSLP)
TSLP provides state-wide technical assistance and training to students with disabilities, families, local education agencies and adult service agencies regarding transition services for youth ages 16 through 21.

Contact Information: Transition Services Liaison Project
221 S. Central Avenue
Pierre, SD 57501
1-800-224-5336; Fax: (605) 224-8320
Website: www.tslp.org

Special Education Programs
The South Dakota Office of Educational Services and Support, Special Education Programs, is South Dakota's State Educational Agency (SEA). It is responsible for assuring that children with disabilities receive a free appropriate public education in the least restrictive environment. It supports schools in their efforts to adopt exemplary teaching practices that lead to improved teaching and learning experiences for children with disabilities. The Office: 1) provides the leadership and technical support essential for school districts, other public agencies, and families to meet the individualized needs of all children and youth with services appropriate to their needs; 2) facilitates and, where federal and/or State policy mandates, oversees collaboration among all agencies and individuals involved in the provision of appropriate services to children and youth; 3) ensures statewide compliance with all State and federal mandates governing the provision of appropriate services to children and youth; and 4) administers the distribution of State and federal funds in accordance with applicable laws and regulations to eligible recipients.

Contact Information: Special Education Programs
700 Governors Drive
Pierre, SD 57501
(605) 773-3678; Fax: (605) 773-3782
Website: http://doe.sd.gov/oess/sped.aspx
# Table of Contents

Introduction ..................................................................................................................... i

Acknowledgments ........................................................................................................... ii

Resources ........................................................................................................................ iii

Table of Contents ......................................................................................................... v

I. Definitions and Acronyms ......................................................................................... xi

II. Purposes and Applicability of Part B to State and Local Educational Agencies ................................................................................................................................. 1
   Purposes and Applicability .......................................................................................... 3

III. Child Find Services ................................................................................................. 5
   Child Find Requirements ........................................................................................... 7

IV. Evaluation / Reevaluation ......................................................................................... 9
   Referral ....................................................................................................................... 11
   Parental Consent ......................................................................................................... 13
   Initial Evaluation ....................................................................................................... 15
   More Than One Evaluation Procedure .................................................................... 16
   Information From More Than One Source ........................................................... 17
   Non-Discriminatory Testing / Relevant Assessment ............................................. 18
   Review of Existing Evaluation Data / Additional Data ......................................... 20
   When Reevaluations May Occur ............................................................................. 22
   Evaluation Before Change in Eligibility ................................................................. 23
   Additional Procedures for Identifying Children With Specific Learning Disabilities
      Definitions / Additional Group Members .............................................................. 24
Review and Revision of the IEP ................................................................. 66
Amendments to the IEP ...................................................................... 67
IEP Team Meeting Checklist ................................................................. 68

VII. Related Services ................................................................................ 71
Definition .............................................................................................. 73
Audiology Services .............................................................................. 74
Counseling / Parent Counseling and Training /
  Rehabilitation Counseling Services .............................................. 75
Early Identification and Assessment / Medical Services ................. 76
Interpreting Services .......................................................................... 77
Occupational Therapy (OT) Services ............................................... 78
Orientation and Mobility Services ..................................................... 79
Physical Therapy (PT) Services .......................................................... 80
Psychological Services ....................................................................... 81
Recreation ............................................................................................. 82
School Health Services / School Nurse Services ............................... 83
Social Work Services in Schools ......................................................... 84
Speech-Language Pathology Services .............................................. 85
Transportation ....................................................................................... 86

VIII. Transition Services ......................................................................... 89
Definition ............................................................................................. 91
IEP Requirements .............................................................................. 93
Transition IEP Team Members .......................................................... 94
Agency Responsibilities ....................................................................... 95

IX. Assistive Technology (AT) ................................................................. 97
  Assistive Technology Device ........................................................... 99
  Assistive Technology Service .......................................................... 100

X. Placement / Least Restrictive Environment (LRE) ............................ 103
  LRE Requirements ........................................................................... 105
  Continuum of Placements / Nonacademic Settings ....................... 106
XI. Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue ................................................................. 111
   Definition of "Private School Children with Disabilities" .................. 113
   Find" ........................................................................................................ 114
   Expenditures ........................................................................................... 115
   Equitable Services Determined ................................................................. 116
   Equitable Services Provided ......................................................................... 117
   Location of Services / Transportation ........................................................ 118
   Due Process Complaints and State Complaints .......................................... 119

XII. Special Topics ......................................................................................... 121
    Transition of Children From Early Intervention (Part C) to Preschool Programs (Part B) ................................................................. 123
    Extended School Year (ESY) Services ...................................................... 124
    Parent Recordkeeping Tips .......................................................................... 126
    Children Who Transfer Districts During School Year ............................. 127
    Functional Behavioral Assessment / Behavioral Intervention Plan .............. 128
    Special Education Teacher Qualifications .................................................. 130
    Use of Paraprofessionals and Assistants .................................................... 132
    Prohibition on Mandatory Medication ....................................................... 133
    Use of Parents' Insurance and Public Benefits ......................................... 134
    Section 504 of the Rehabilitation Act of 1973 ........................................... 136
    Early Intervening Services ........................................................................... 137
    Free Appropriate Public Education (FAPE) / Age of Eligibility .......... 139
    Graduation Requirements ............................................................................ 141

XIII. Procedural Safeguards .......................................................................... 143
    Opportunity to Examine Records ............................................................... 145
    Parent Participation in Meetings ................................................................. 146
    Parent Participation in Placement Decisions ............................................... 147
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Educational Evaluation (IEE)</td>
<td>148</td>
</tr>
<tr>
<td>Prior Notice by Public Agency</td>
<td>150</td>
</tr>
<tr>
<td>Content of Prior Notice</td>
<td>151</td>
</tr>
<tr>
<td>When Procedural Safeguards Notice is Given</td>
<td>152</td>
</tr>
<tr>
<td>Contents of Procedural Safeguards Notice</td>
<td>153</td>
</tr>
<tr>
<td>Definitions of Consent / Personally Identifiable</td>
<td>154</td>
</tr>
<tr>
<td>Parental Consent / Refusal to Consent</td>
<td>155</td>
</tr>
<tr>
<td>Placement of Children by Parents When FAPE IS at Issue</td>
<td>158</td>
</tr>
<tr>
<td>Mediation</td>
<td>161</td>
</tr>
<tr>
<td>Filing a Due Process Complaint</td>
<td>163</td>
</tr>
<tr>
<td>Due Process Complaint Requirements</td>
<td></td>
</tr>
<tr>
<td>Filing / Content</td>
<td>164</td>
</tr>
<tr>
<td>Sufficiency of Due Process Complaint</td>
<td>165</td>
</tr>
<tr>
<td>Response to Due Process Complaint</td>
<td>166</td>
</tr>
<tr>
<td>Resolution Process</td>
<td>167</td>
</tr>
<tr>
<td>Impartial Due Process Hearing</td>
<td></td>
</tr>
<tr>
<td>Right to Hearing / Hearing Officer Requirements</td>
<td>170</td>
</tr>
<tr>
<td>Subject Matter / Time Limitations for Filing</td>
<td></td>
</tr>
<tr>
<td>Due Process Complaints</td>
<td>171</td>
</tr>
<tr>
<td>Hearing Rights</td>
<td>172</td>
</tr>
<tr>
<td>Parental Rights / Hearing Decisions / Timelines</td>
<td>173</td>
</tr>
<tr>
<td>Civil Action (Appeals to Court)</td>
<td>175</td>
</tr>
<tr>
<td>Bringing Court Action Under Other Laws / Exhaustion of</td>
<td></td>
</tr>
<tr>
<td>Administrative Remedies / States' Sovereign Immunity</td>
<td>176</td>
</tr>
<tr>
<td>Attorneys' Fees</td>
<td>177</td>
</tr>
<tr>
<td>Child's Status During Proceedings (&quot;Stay Put&quot;)</td>
<td>180</td>
</tr>
<tr>
<td>Surrogate Parents</td>
<td>181</td>
</tr>
<tr>
<td>Transfer of Parental Rights at Age of Majority / One-Year</td>
<td>182</td>
</tr>
<tr>
<td>Notice Requirement</td>
<td></td>
</tr>
<tr>
<td>Confidentiality of Information</td>
<td></td>
</tr>
<tr>
<td>Access Rights</td>
<td>184</td>
</tr>
<tr>
<td>Record of Access / Locations / Fees</td>
<td>185</td>
</tr>
<tr>
<td>Amendment of Records at Parent's Request</td>
<td>186</td>
</tr>
<tr>
<td>Hearings</td>
<td>187</td>
</tr>
<tr>
<td>Consent / Safeguards</td>
<td>189</td>
</tr>
<tr>
<td>Destruction of Information / Children's Rights</td>
<td>190</td>
</tr>
</tbody>
</table>
State Complaint Procedures
Remedies Available ................................................................. 191
Time Limits / Procedures .......................................................... 192
State Complaints and Due Process Hearings ............................. 193
Content of Complaint ............................................................... 194

XIV. Discipline ........................................................................... 195
“Change of Placement” ............................................................ 197
Authority of School Personnel
Removals Up to 10 Consecutive School Days ............................. 198
Removals Exceeding 10 Consecutive School Days /
Services Required ................................................................. 200
Manifestation Determination ..................................................... 202
Special Circumstances / Notification / Definitions /
Interim Alternative Educational Setting (IAES) ......................... 204
South Dakota Rules on Removals of Less Than 10 Consecutive
School Days / More than 10 Consecutive School Days ............. 206
Appeals / Authority of Hearing Officer ..................................... 208
Placement During Appeals (“Stay Put”) ..................................... 210
Expedited Due Process Hearings .............................................. 211
Protections for Children Not Determined Eligible for Special
Education and Related Services ............................................. 212
Referral to and Action by Law Enforcement and
Judicial Authorities ................................................................. 214
Removal for up to 10 Consecutive School Days (Diagram) ....... 215
Removal for More than 10 Consecutive School Days (Diagram) .. 216
Removal for More than 10 Consecutive School Days due to
Special Circumstances (Diagram) ............................................ 217
Appeal Process (Diagram) .......................................................... 218