

Memo

Date: June 08, 2009

Re: Verified Memo - North Dakota

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North Dakota prohibits discrimination, and protects the constitutional, civil, or legal rights of persons with developmental disabilities.<sup>1</sup> The state acts to enhance the public's awareness of developmental disorders through the cooperative efforts of state universities, the department of human services, the North Dakota Center for Persons with Disabilities and others. Groups have come together to form the Head Start Collaboration Project for the advancement of children's programs and addressing conditions leading to developmental disabilities and child aid programs ([www.discovernd.com](http://www.discovernd.com)). North Dakota also has extensive legislation regarding the protection and funding of facilities that house individuals with developmental disabilities.

**Adult Care**

A person with a "disability" is a person with physical or mental impairment that substantially limits one or more major life activities, has a record of this impairment, or being regarded as having this impairment.<sup>2</sup> The Committee on Protection and Advocacy includes in its eligibility for services adults with developmental disabilities.<sup>3</sup>

"Adult protective services" means remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect necessary to protect an abused or neglected vulnerable adult, coupled with ensuring the least restrictive alternative is provided, preventing further abuse or neglect, and promoting self-care and independent living.<sup>4</sup>

The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services.<sup>5</sup> The system must include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, and guidelines and training for guardians.<sup>6</sup>

**Educational/Vocational Education Statutes**

North Dakota defines "student with a disability" as an individual who is at least three years of age but who has not reached the age of twenty-one before September First of the year in which the individual turns twenty-one and who because of mental or learning characteristics requires special education services designed to meet the individual's educational needs.<sup>7</sup> This term includes an individual with autism.<sup>8</sup>

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<sup>1</sup> N.D. CENT. CODE § 25-01.2-03 (2009).

<sup>2</sup> N.D. Cent. Code § 14-02.4-05 (2009).

<sup>3</sup> N.D. Cent. Code § 25-01.3-08(a) (2009).

<sup>4</sup> N.D. Cent. Code § 50-25.2-01(3) (2009).

<sup>5</sup> N.D. Cent. Code § 50-06-24 (2009).

<sup>6</sup> Id.

<sup>7</sup> N.D. CENT. CODE § 15.1-32-01(4)(a) (2009).

Every developmentally disabled child is entitled to a free and appropriate education in the least restrictive appropriate setting.<sup>9</sup> Developmentally disabled children are also free to be educated at home, by parents or others.<sup>10</sup>

The director of special education shall assist school districts with the development and administration of special education programs.<sup>11</sup> Each school district shall provide special education and related services as a single district, as a member of a multidistrict special education unit, or as a participating district in a regional education association.<sup>12</sup> Each school district and entity providing special education shall cooperate with the director of special education and with the institutions of this state in the provision of special education.<sup>13</sup> If a school district has evidence of a student's disability, the school district shall convene a multidisciplinary team consisting of educational professionals, medical professionals, and the student's parent to share assessment information related to the student's suspected disability.<sup>14</sup> If necessary, the team may create an individualized education program or services plan and make recommendations for special education and related services.<sup>15</sup>

If an individual who is at least three years of age but less than ten years of age show impaired cognitive, fine motor, vision, hearing, communication, preacademic, socialization, or adaptive skill acquisitions, and if the individual needs special education and related services, the school district may determine that the individual is a student with a disability as a result of a noncategorical delay.<sup>16</sup>

A student with disabilities is entitled to an educational program that extends beyond the normal school calendar if the student's individualized education program team or services team finds regression would be caused by an interruption in the student's educational program and that the student's limited recoupment capacity makes it impossible or unlikely that the student reach an expected level of self-sufficiency and independence from caretakers which the student would otherwise be expected to reach.<sup>17</sup> A school must have an individual educational plan for each of its students with developmental disabilities.<sup>18</sup>

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<sup>8</sup> *Id.* § 15.1-32-01(4)(a)(8) (2009). Also, "Student with a disability" includes a student aged age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

<sup>9</sup> N.D. CENT. CODE § 25-01.2-13 (2009).

<sup>10</sup> N.D. CENT. CODE § 15.1-23-13 (2009). Provided that:

(1) The parent files with the school district superintendent a services plan that was developed privately or through the school district; and  
(2) The services plan demonstrates that the child's special needs are being addressed by persons qualified to provide special education or related services.

<sup>11</sup> N.D. CENT. CODE § 15.1-32-07 (2009).

<sup>12</sup> N.D. CENT. CODE § 15.1-32-08 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> N.D. CENT. CODE § 15.1-32-12 (2009).

<sup>15</sup> *Id.*

<sup>16</sup> N.D. Cent Code §15.1-32-24.

<sup>17</sup> N.D. CENT. CODE § 15.1-32-17 (2009).

<sup>18</sup> N.D. Cent. Code § 25-01.2-14 (2009).

The developmental center at Westwood Park, Grafton is maintained for instruction, care, and custody of persons with developmental disabilities, and provides trades and manual industry to prepare persons for self-support.<sup>19</sup>

### **Funding Statutes**

The Department of Human Services may purchase residential care, custody, treatment, training, and education for individuals with developmental disabilities from any treatment or care center licensed in this state.<sup>20</sup>

A revolving loan fund is held in the Bank of North Dakota and is used to make loans to nonprofit corporations, organized where the facility is proposed to be located, and for costs related to the establishment of facilities for individuals with developmental disabilities.<sup>21</sup>

Each school district shall require that all family insurance options be exhausted in paying the costs of determining a student's disability and the provision of related services to the student.<sup>22</sup> The school district is responsible for all costs not covered by the family's insurance.<sup>23</sup>

If a student requires education in another school district, the superintendent of public instruction must approve, in advance, the contractual terms and services provided by the new admitting school.<sup>24</sup> The contract provide that the student's school district of residence is liable for the cost associated of educating the student.<sup>25</sup> Upon being notified that the student's school district of residence has not paid for services that were provided to the student, the superintendent of public instruction, after verification, may withhold all state aid payments to which the student's school district of residence is entitled, until the required payments have been made.<sup>26</sup>

Each year the superintendent of public instruction identifies the one percent of students who require special education statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for "excess cost" reimbursement.<sup>27</sup> The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.<sup>28</sup>

The superintendent of public instruction may apply for, receive, and administer federal aid available for the provision of special education services to students within the limits of legislative appropriations.<sup>29</sup>

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<sup>19</sup> N.D. Cent. Code § 25-04-02(7) (2009).

<sup>20</sup> N.D. Cent. Code § 25-18-03 (2009).

<sup>21</sup> N.D. Cent. Code § 6-09.6-01 (2009).

<sup>22</sup> N.D. Cent. Code § 15.1-32-13 (2009).

<sup>23</sup> Id.

<sup>24</sup> N.D. Cent. Code § 15.1-32-14(2). (2009).

<sup>25</sup> N.D. Cent. Code § 15.1-32-14(3) (2009)

<sup>26</sup> N.D. Cent. Code § 15.1-32-14(4) (2009).

<sup>27</sup> N.D. Cent. Code § 15.1-32-18(1) (2009). "Excess costs" are those that exceed four and one-half times the state average cost of education per student and which are incurred by the special education students. Id. § 15.1-32-18(3).

<sup>28</sup> Id. § 15.1-32-18(2).

<sup>29</sup> N.D. Cent. Code § 15.1-32-21(1), (2) (2009).

The department of human services requests appropriations and resources sufficient to ensure the accreditation and certification of the developmental center at Westwood Park, Grafton.<sup>30</sup> Additionally, the department determines payment rates for private, licensed developmentally disability providers by applying the inflation rate.<sup>31</sup> Nonprofit group homes benefiting persons with developmental disabilities are exempt from property taxation.<sup>32</sup>

### **Healthcare Statutes**

"Developmental disability" means a severe, chronic disability of a person which is attributable to a mental impairment, manifested before the person attains age twenty-two, is likely to continue indefinitely, results in substantial functional limitations in three or more areas of major life activity, and reflects the person's need for services which are of lifelong or extended duration and are individually planned and coordinated.<sup>33</sup>

Under the chapter of Residential Care for Autistic Children, "autism spectrum disorder" means a brain disorder that may prevent understanding of what a person sees, hears, or otherwise senses and is conceptualized as a behavioral syndrome with multiple biological manifestations. "Residential care facility for children with autism spectrum disorder" means a living facility providing twenty-four-hour assistance for five or more children not related by blood or marriage to the operator through a multidisciplinary approach including a medical diagnosis of autism spectrum disorder<sup>34</sup>

The State Department of Health establishes standards for licensing residential care facilities, and grant annual licenses to the facilities that meet the established standards.<sup>35</sup> A residential care facility must be specifically designed, arranged, and staffed to provide twenty-four hour assistance with activities of daily living in a homelike environment in response to the individual needs of the residents.<sup>36</sup> A residential care facility must provide or make arrangements for diagnostic and treatment services, behavioral management, and educational services to enable residents to attain or maintain their highest practicable level of functioning.<sup>37</sup>

The Committee on Protection and Advocacy's job is to, within the limits of legislative appropriations, provide advocacy and protective services for persons with developmental disabilities and persons with mental illnesses. The rules adopted by the committee relating to the need for the consent of the client must balance the rights of persons with developmental disabilities or mental illnesses to privacy and to refuse services under section 25-01.3-11 with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules.<sup>38</sup>

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<sup>30</sup> N.D. Cent. Code § 25-04-02.1 (2009).

<sup>31</sup> N.D. Cent. Code § 50-24.1-25 (2009).

<sup>32</sup> N.D. Cent. Code § 57-02-08(31) (2009).

<sup>33</sup> N.D. Cent. Code § 25-01.2-01(a-e) (2009). Such as: (1) Self-care; (2) Receptive and expressive language;(3) Learning;(4) Mobility; (5) Self-direction; (6) Capacity for independent living; and (7) Economic sufficiency).

<sup>34</sup> N.D. Cent. Code § 23-09.4-01(1-3). (2009).

<sup>35</sup> N.D. Cent. Code § 23-09.4-02 (2009).

<sup>36</sup> N.D. Cent. Code § 23-09.4-04 (2009).

<sup>37</sup> *Id.*

<sup>38</sup> N.D. CENT. CODE § 25.01.3-06 (2009).

Individuals with developmental disabilities can only be chemically restrained upon the written authorization of a licensed physician.<sup>39</sup> Furthermore, the facility administrator must be notified of and agree to physically restraining or isolating a developmentally disabled person.<sup>40</sup>

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<sup>39</sup> N.D. CENT. CODE § 25-01.2-08 (2009).

<sup>40</sup> N.D. CENT. CODE § 25-01.2-10 (2009).

# Memo

**To:** David Sternfield  
**From:** Cassandra Quaglia  
**Date:** 6/30/2009  
**Re:** North Dakota Changes, Deletions Revisions

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**Changes:** The most significant change to the North Dakota Century Code as it applies to autism is changing the term autism to **autism spectrum disorder** (N.D. Cent. Code § 23-09.4-1(1-3)). All definitions within the code are framed to reflect this change. The code was updated as of the 61 Legislative Assembly and becomes effective after August 1, 2009.