

***Board of Regents – Update on the recent Supreme Court ruling on the South Dakota School for the Deaf (recommended time: 15 min.)***

***Barron v. South Dakota Board of Regents***

On October 1, 2010, Federal District Court Judge Lawrence L. Piersol denied Plaintiffs' request for a preliminary injunction and granted Defendants' motion to dismiss.

On October 29, 2010, the Plaintiffs submitted an appeal to the Eighth Circuit Court of Appeals seeking reversal of Judge Piersol's decision. Plaintiffs' initial filing challenges the decision in every particular, but Plaintiffs have yet to file a formal statement of the issues that they intend to present on the appeal.

At base, Judge Piersol's opinion validates the Board's effort, in conjunction with Governor Rounds and the Legislature, to review SDDS operations and to develop more effective and economical ways to provide services that children need at locations where they are needed, and in ways that will do the greatest good to the greatest number of children.

Judge Piersol acknowledged that:

- South Dakota's regulations implementing the Individuals with Disabilities Education Act makes school districts, not the special schools, the proper defendant of due process hearings, at least insofar as concerns the Board's public policy decisions involving programs and program delivery.
- The Board's implementation of the Deaf Education Task Force Recommendations "is consistent with the IDEA's strong preference that handicapped children attend regular classrooms."
- The IDEA does not require placements in residential settings, even if these help children learn most quickly, if public schools, supported by Outreach Services, can provide an appropriate education, i.e., provide meaningful access to programs "with some educational benefit."
- The mere change of location at which a program is delivered does not establish a fundamental change in the Individualized Educational Plans of the affected students and does not trigger enhanced due process requirements.
- South Dakota's deaf children bill of rights statute, which requires that IEP teams consider "particularly those program options that provide the pupil with an appropriate and equal opportunity for communication access, including the state school for the deaf which may be the least restrictive environment for a deaf or

hard-of-hearing child,” does not preclude “the State or the School for the Deaf from providing services to deaf students in outreach programs with local school districts, [or] requires the School for the Deaf to educate deaf students at the Sioux Falls campus.”

- As a matter of state law, the Board has substantial discretion in determining which educational programs consistent with the institution’s mission will be provided or terminated at the special schools, and the Board and the Legislature have authority to determine how to address program continuation or termination in view of adverse financial or general economic conditions.