



Q: Who is considered a “child with a disability” under the Individuals with Disabilities Education Act?

A: To be considered a “child with a disability” under IDEA, a student must have one or more of the following disabilities which must adversely affect the student’s educational performance:

- intellectual disability
- hearing impairments (including deafness)
- speech or language impairments
- visual impairments (including blindness)
- serious emotional disturbance
- orthopedic impairments
- autism
- traumatic brain injury
- health impairments (including ADHD, epilepsy, a heart condition)
- specific learning disabilities



Q: What is “educational malpractice”?

A: Generally, educational malpractice claims fall into one of three different categories: (1) the student alleges that the school negligently failed to provide him with adequate skills; (2) the student alleges that the school negligently diagnosed or failed to diagnose the student’s learning or mental disabilities; or (3) the student alleges that the school negligently supervised his training. (See *Moore v. Vanderloo*, 386 N.W.2d 108, 114 (Iowa 1986)).



Q: Is educational malpractice recognized as a valid legal claim in South Dakota?

A: The South Dakota Supreme Court has not considered whether a claim for educational malpractice is valid in South Dakota. However, the South Dakota Federal District Court recently predicted that the South Dakota Supreme Court would not recognize educational malpractice as a proper claim.

Specifically, the Federal District Court rejected a claim for educational malpractice because (1) the lack of a satisfactory standard of care by which to evaluate an educator; (2) the inherent uncertainties about causation and the nature of damages in light of such intervening factors as a student's attitude, motivation, temperament, past experience, and home environment; (3) the potential for a flood of litigation against schools; and (4) the possibility that such claims will embroil the courts into overseeing the day-to-day operations of schools.



Scott Swier



Brooke Schloss



Jake Fischer



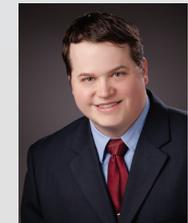
Michael Henderson



Chris McClure



Amanda Work



Bill Blewett

SWIER LAW FIRM, PROF. LLC

AVON OFFICE

202 N. Main Street, P.O. Box 256
Avon, SD 57315

p: (605) 286-3218 | f: (605) 286-3219
toll free: (888) 864-9981

CORSICA OFFICE

240 E. Main Street
Corsica, SD 57328

p: (605) 286-3218 | f: (605) 286-3219
toll free: (888) 864-9981

SIOUX FALLS OFFICE

2121 W. 63rd Place, Suite 200
Sioux Falls, SD 57108

p: (605) 275-5669 | f: (605) 286-3219
toll free: (888) 864-9981

WINNER OFFICE

142 E. 3rd Street
Winner, SD 57580

p: (605) 842-3373 | f: (605) 842-3375
toll free: (888) 864-9981

info@swierlaw.com | www.swierlaw.com