

PERSPECTIVES *on disability law*



Hinkle, Fingles & Prior
Attorneys at Law



Vol. 6, No. 1, October 2013

New and On Line

The New Jersey service delivery system for children and adults with disabilities recently underwent dramatic changes. The firm produced a series of fact sheets to help families:

- The Division of Developmental Disabilities New Eligibility Rules: What Families Need to Know.
- Eligibility for Services from The Department of Children and Families for Children with Developmental Disabilities

Visit our website:

www.hinkle1.com

for your free copy.

Speaking Events

The attorneys at Hinkle, Fingles & Prior are available to speak to parent groups throughout New Jersey and Pennsylvania in the evening and on weekends, and can present information on a wide range of topics across the lifespan. There is never a charge.

Plan your events now for both fall 2013 and spring 2014 by using our new on-line workshop request or by calling the office directly at 609-896-4200.

Celebrating 40 Years of Advocacy: *A Successful Start to New Pro bono Program*

“The firm’s founder, Herbert Hinkle, Ira, and I all started our careers by providing free legal representation to families of persons with disabilities. We are proud to continue that mission.”

-S. Paul Prior, Esq.

“Our long-standing commitment to serving the wider disability community remains strong.”

-Ira M. Fingles, Esq.

As the firm celebrates 40 years of advocacy on behalf of individuals with developmental disabilities, it developed a Pro bono Program, the goal of which is to provide legal representation to families that would not otherwise be able to secure this level of advocacy for their child. The firm plans to handle a limited number of cases that come to it through its relationships with disability-related statewide non-profit organizations.

Hinkle, Fingles & Prior has consistently supported non-profit organizations serving people with disabilities by providing free educational workshops focused on helping families understand their rights, serving on boards of directors to many disability-related non-profit organizations, and by providing financial support to several of the largest advocacy organizations. Hinkle, Fingles & Prior’s Pro bono Program is a natural extension of the firm’s long-standing commitment to serve the community.

Shortly after the Pro bono Program was announced, the firm was asked to represent a widowed father and his 19-year-old son with intellectual, social and emotional disabilities. Hinkle, Fingles & Prior interceded on the student’s behalf to ensure the local school district continued to provide crucially needed special education services in his current school placement

“We are very happy to have secured such an important victory for this family due to the specialized legal representation provided through our long-standing and successful special education practice” said Ira M. Fingles, Esq.



Hinkle, Fingles & Prior, Attorneys at Law

Starting the New School Year On The Right Foot

With the new school year underway, parents have many opportunities to lay the groundwork for success of students with disabilities and to minimize the likelihood that disputes arise as the school year progresses.

The following tips may be helpful:

1. Get to know the staff responsible for your child's education. Make contact in a friendly way, such as an invitation to drop by to chat before or after school. Such meetings may be more productive if they are viewed as an opportunity for parents to share information and answer questions about the child rather than an interrogation of school personnel to determine whether, and to what extent, they are familiar with the child's individual needs.
2. Prepare a brief written summary of the child's strengths and weaknesses that can be shared with instructional staff as well as administrators. Be certain to include relevant information about how the student functions outside of school, particularly in nonacademic areas such as behavior and social skills. This should be no more than a page or two.
3. If possible, secure written statements from individuals who are familiar with the student's functioning such as private therapists, tutors, behaviorists, and the like.
4. It is important to have accurate information about the child's levels of functioning at the beginning of the school year that can serve as a baseline for comparisons throughout the school year to determine whether, and how much, progress has been made in the student's areas of need.
5. Keep a journal or diary of your informal interactions with school district personnel. Things that may seem unimportant at the beginning of the school year may take on added significance as the school year progresses. (As always, ensure that all significant communications are memorialized in writing and keep a copy for your records.)
6. Try to put feelings of anger or frustration from past dealings aside. The start of new school year is an opportunity to work collaboratively and constructively with the educators and administrators responsible for your child's education, even if difficulties have been experienced in the past.

A Few of Our Recent Legal Victories

- Attorneys of the firm successfully litigated on behalf of a teenage girl with severe autism and self-injurious and aggressive behaviors in order to secure an appropriate residential education placement. She was awarded over four years of compensatory education, and the parents were able to recover the full amount of attorneys' fees and costs that they had incurred.
- The firm has represented a number of clients in order to either become or remain eligible for Medicaid. In some cases the state threatened to terminate services if Medicaid eligibility was not established. Through the firm's efforts, services have remained in place for all clients.
- Hinkle, Fingles and Prior represented a 35-year-old man with Down syndrome in his effort to obtain Medicaid. He will now have the medical coverage he needs and will be able to continue in his DDD-funded supported employment day program.
- Attorneys helped an 11-year-old boy with autism and other disabilities get placed at a specialized school for students with autism and behavioral issues. As a result of the firms' intervention, he will benefit from doctoral level BCBA behavioral interventions and extended school year services.

Q&A: Special Needs Trusts: Third Party Trusts and Payback Trusts



Many parents know that special needs trusts play a critical role in planning for the financial future of their child with disabilities. If a person with disabilities has too much money in his own name he will become ineligible for important government benefits, like SSI and Medicaid. A special needs trust can help to avoid this problem, but not all trusts are the same.

Q: What is a third-party special needs trust?

A: A third-party special needs trust is used to hold assets for a person with disabilities that are set aside by other family members – usually the person’s parents. The individual never “owns” the money directly, and does not have access to the funds. Typically, parents create a third party trust for a child and then fund the trust with cash, stocks, bonds, life insurance or other assets left through their estate plan when they die.

Q: What is a first-party special needs trust?

A: A first-party trust – sometimes called a “payback trust” – is designed to hold assets that are owned by an individual with disabilities. These funds might include a personal injury award, or gifts and inheritances from family that were given directly to the individual. A first-party trust can only be created by a parent, a grandparent, a guardian or a court.

Q: What can the trust money be used for?

A: Trust assets in either type of trust can be used for the benefit of the individual, including special classes, hobbies, luxury items, personal services, furniture, professional fees, computer equipment, transportation, vacations, alternate treatment, and second professional opinions, to name a few.

Q: What is the difference between a third-party trust and a first-party trust?

A: The major difference is what happens to any assets left over in the trust after the person with a disability dies. In a third-party trust, funds remaining in trust after the person dies are distributed to people or charities selected by the parents when they created the trust. Typically, the remaining funds go to other siblings, or charitable organizations providing disability-related services to the person with a disability.

In a first party trust, funds remaining must be paid back to the government in order to reimburse various government agencies that have paid for care over the course of the life of the person with a disability. A first party trust is also subject to more stringent federal and state reporting requirements.

Q: What type of trust is preferred?

A: Because of the payback requirement, a first-party trust should be used only when there is no other choice.

Regardless of the form of special needs trust, it is important for families to take care of this sooner rather than later. New Jersey and many other states are requiring individuals to be eligible for Medicaid and other means-tested government assistance benefits as a condition of the receipt of services.

Families should not wait until services are needed to start planning. To do so will likely result in substantial delays in the receipt of services or in the worst-case scenario, families may find that they are not able to receive vital services at all.

NEWS FROM THE PRACTICE

- Hinkle, Fingles and Prior was honored by The Arc of New Jersey for the firm's ongoing commitment to advocacy.
- Maria Fischer, Esq., has been appointed to the Board of Directors of Special Olympics New Jersey.
- Andrew Linenberg, Esq., has been appointed to the Special Needs Committee at Jewish Children and Family Services in Cherry Hill.
- Evelina Padilla, Esq., has been appointed to serve on the board of Advocates for Children of New Jersey (ACNJ) in Newark.
- Herbert D. Hinkle, Esq., was honored by Rutgers Camden School of Law for running one of their pro bono projects and for his support of law students who do outreach to the Camden public schools with a summer scholarship for their work. He was also recognized as adjunct professor of the year.



- Hinkle, Fingles & Prior is proud to have supported ASAH's 2013 Special Education Week! The firm provided funding for a scholarship for a graduate of an ASAH member school. Tashanda Spann-Mack (above center), was one of the scholarship recipients. She is shown with ASAH Executive Director, Gerry Thiers (left), and ASAH Board President, Dorothy K. Van Horn (right).




Hinkle, Fingles & Prior
Attorneys at Law

Representing people with disabilities and their families since 1974

Hinkle, Fingles & Prior, Attorneys at Law
2651 Main Street
Lawrenceville, New Jersey 08648

PRESORTED
STANDARD
U S POSTAGE
PAID
W. CALDWELL, NJ
PERMIT NO. 55

SPECIAL EDUCATION | ADULT SERVICES | GUARDIANSHIP | SPECIAL NEEDSTRUSTS | TRANSITION & HIGHER EDUCATION | ELDER LAW | ESTATE PLANNING & ADMINISTRATION
OFFICES IN: LAWRENCEVILLE, CHERRY HILL, FLORHAM PARK, PARAMUS, NJ & PLYMOUTH MEETING AND BALA CYNWYD, PA

 ALL OFFICES ARE BARRIER-FREE. 609-896-4200 • 215-860-2100 • www.hinkle1.com

© 2013 Hinkle, Fingles & Prior, P.C., Attorneys at Law. All rights reserved. Disclaimer: Information contained in this publication is for educational purposes and is not a substitute for legal services.



Hinkle, Fingles & Prior, Attorneys at Law

