

# Planning the Transition from School to Adult Life:

*Considerations for Students with Disabilities*

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*“Transition planning provides a framework for identifying long-range post-graduation goals, and the services and strategies that will help students make the shift from school to adult life.”*

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# INTRODUCTION

The Individuals with Disabilities Education Act, or IDEA, is a federal law guaranteeing students with disabilities the right to a free, appropriate education. For every student eligible for special education services under IDEA, the local school district must develop and implement an individualized education program or IEP, describing the unique set of services and supports needed. For some students, that includes placement at a private school at no cost to parents.

Each time the U.S. Congress has reauthorized IDEA, lawmakers have placed greater emphasis on improved outcomes. Revisions to IDEA in 1990 reflected congressional concern that, 15 years after IDEA's initial implementation, most students with disabilities continued to be denied opportunities to engage in constructive activities after graduation, such as employment or further education. Congress then added highly detailed and intensive requirements to aid in students' transition from school to post-school life that were further strengthened in subsequent amendments to IDEA in 1997 and 2004.

Transition planning provides a framework for identifying long-range post-graduation goals, and the services and strategies that will help students make the shift from school to adult life.



## What are transition services?

### **The term, "transition services," means:**

A coordinated set of activities for a student designed within a results-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transition services must be based on a student's individual needs, taking into account his or her strengths, preferences, and interests. They include:

- Instruction
- Related services
- Community experiences
- Development of employment and other post school adult living objectives
- Acquisition of daily living skills
- Functional vocational evaluation

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## When does transition planning begin?

No later than age 14—or around the 8th grade—a student’s IEP should begin to reflect post-school goals that will vary from student to student, but generally outline the following:

- College or other higher education
- Employment
- Military service
- Vocational or technical training
- Independent living

Beginning at age 14 or younger, the IEP must include a statement of the student’s transition service needs that describes, at minimum, the courses required for graduation, and the plan of study the student will follow each year. This is also a time for the IEP team to consider other educational experiences, both in school and in the community, that can help the student achieve his or her desired post-school goals. This statement must be based on the student’s needs, preferences, and goals, and must be reviewed every year as part of the IEP process.

## When must transition services begin?

Beginning no later than the school year in which the student turns 16, the IEP must include a statement of needed transition services, describing the coordinated set of activities and strategies that will lead to the desired post-school outcomes, and identifies those responsible for providing them.

While this statement must be included in the IEP that will be in effect when the student turns 16, it can, and sometimes must, be included in earlier IEPs if more advanced planning is needed. This may be the case, for example, for a student with a severe developmental disability requiring significantly greater planning efforts to ensure a smooth transition as compared to a lesser-disabled student.

### College Bound?

Often, students with disabilities find out too late that the courses they took in high school did not prepare them for the college or technical school they want to attend. Such courses may include, for example, foreign languages. Think ahead and prepare so that the student has the scope and sequence of classes needed for admission, and he or she is ready to take any necessary standardized testing, such as the SAT or ACT.

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**This statement of needed transition services** is much broader than the **statement of transition service needs** required at age 14, but both are necessary components of transition planning required by law. Taken together, these two steps ensure the student is able to achieve long-term goals and is linked to the supports, services, and programs needed for success.

## What strategies and activities must be included in the transition process?

- **Instruction** can take place in a classroom, small group, or one-to-one learning. It can be provided in public schools, private schools, at home, or in a community setting.
- **Related Services** may include transportation, speech, occupational therapy, physical therapy, and other supportive services necessary for a student to benefit from special education.
- **Community Experiences** may be provided to the student outside of the school building, by schools, consultants, private providers, or other agencies.
- **Employment, Other Post-School Adult Living Objectives** may lead to a job or career, and important adult activities. Schools or other entities could provide these services.
- **Daily Living Skills** are the types of activities most adults do every day. Schools or other entities usually provide this type of instruction.
- **Functional Vocational Evaluation** provides information about job or career interests, aptitude, and skills. Schools or other entities could provide this assessment service.

If the IEP team agrees that services in one or more of these areas is not needed, the IEP must state so and provide the rationale.

### Community-Based Instruction

Community-based instruction can be a very important part of a student's transition IEP. It involves learning by doing. The student receives instruction either 1:1 or in a small group in a community setting, such as a bank, supermarket, train station, or job site and attains functional everyday life skills through hands-on experiences, such as grocery shopping, using public transportation, ordering food in a restaurant, making change, or using a map. This instruction might be provided by a classroom teacher, a community organization, a job coach, or a para-professional.

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## Who is involved in transition planning?

Regardless of where the student attends school, the case manager at the local school district is responsible for the transition planning process, but there are many individuals who come together to help the student plan for transition including:

- The student,
- The student's family,
- Special education teachers,
- General education teachers,
- Related service providers,
- Administrators,
- Guidance counselors,
- Others, as appropriate.

Some schools have transition specialists who may be well-informed about resources and adult services in the community.

Representatives from the following government agencies that provide post-high-school services should also be involved:

- The Department of Labor,
- The Division of Vocational and Rehabilitation Services,
- The Department of Human Services' Division of Mental Health and Addiction Services,
- The Department of Human Services' Division of Developmental Disabilities,
- The Social Security Administration.

Other individuals, community leaders, staff from a local Center for Independent Living (CIL), potential employers, and staff or volunteers from provider agencies may attend meetings or serve as one-time or ongoing consultants to the team, sharing expertise or insight to help the team plan and make decisions.

## What if an outside agency does not attend or fails to provide services?

If a representative from an outside agency is invited to the IEP meeting but does not attend, the school district must take other steps to obtain their participation. If an outside agency other than the school district fails to provide transition services described in the IEP, the district must reconvene an IEP meeting to identify alternative strategies to meet the objectives. A lack of cooperation from outside agencies will require the district to provide the necessary services itself.

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## What is the role of the student in transition planning?

Students with disabilities age 14 and older must be invited to participate in transition planning. If the student does not attend the meeting when transition is being discussed, the district must take other steps to ensure that his or her preferences and interests are considered.

### Self-Advocacy and Self-Determination Skills

Teaching students self-advocacy and self-determination skills can be an important aspect of the transition process when they learn about laws protecting people with disabilities from discrimination, such as the Americans with Disabilities Act (ADA) and Section 504 of the Rehab Act.

### Considering Guardianship

Eighteen is the age of majority in New Jersey. At that time, all rights are transferred to the student, and regardless of disability, an adult student has the right to make his or her own decisions, unless the parent has obtained guardianship.

At least three years before the student reaches age 18, the parent and student must be notified that all rights will transfer to the student on reaching the age of majority.

Many students, including those with severe disabilities, are able to make some decisions on their own. Parents should consider options for surrogate decision-making that maximize independence, while at the same time, provide necessary protections. Parents seeking guardianship must apply through the court. Parents should retain an attorney to represent them in this process about 6 months before the student's 18th birthday.

## When should a student with disabilities graduate?

IDEA-eligible students are entitled to receive special education services through age 21. Although many students will complete the academic requirements for a diploma before that time, some will continue to need services. The decision to graduate and accept a diploma should

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not be made without careful consideration, because in New Jersey, once a student accepts a diploma, the district is no longer required to provide services under IDEA, and a student's ability to obtain needed services beyond the traditional senior year ends.

This is particularly vital to consider for those likely to need ongoing support services from the Division of Developmental Disabilities. The agency's new rules stipulate that they serve ONLY those age 21 and over. Therefore, if a student with developmental disabilities accepts a diploma before the age of 21, it is very likely that there will be a prolonged gap in services.

## Can a student with disabilities participate in commencement ceremonies with peers, even if he or she is not accepting a diploma?

There is an important distinction between participation in commencement ceremonies and accepting a diploma. In New Jersey, the law entitles a student to participate in graduation ceremonies with his or her class even if a diploma is not received.

## What services might be part of the IEP for students between the ages of 18 and 21?

Depending on the needs of the student, services for those over the age of 18 might include:

- Continuation of services at the current placement
- Community-based instruction
- Job coaching
- Travel training
- Career assessment and job sampling
- Support on a college campus
- Social skills training and support
- Assistance with independent living, overnights, and experiences
- Ongoing related services, such as speech, OT, PT, and/or counseling
- Civic awareness and training or instruction in legal standards for adult behavior

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## Are there special considerations for students planning to attend college?

At the college level, specialized education and accommodations are no longer a right or an entitlement, but a matter of eligibility. Students with disabilities get into college the same way all other students do: They research the schools that interest them, go visit those colleges, meet students and staff, and ask questions. They take entrance exams and complete college applications.

### Accommodations on College Entrance Tests

Students with a documented disability may be able to take the ACT, SAT, or other college entrance tests with accommodations, such as extended time, a reader, private testing area, or other supports, but the testing companies REQUIRE recent evaluations (not less than 3 years old) in order to be considered for these. Therefore, parents should NOT waive re-evaluations, and should ensure that the IEP describes, in detail, all necessary accommodations and modifications on testing. It is up to each testing agency to determine whether to grant the request for accommodations.

For the student planning to attend college, waiver of high school courses such as math and foreign language is not recommended. Colleges are not required to waive courses deemed essential to the curriculum or required for certification. It is important to understand that all colleges are different, and policies and procedures will vary from one to the next.

Students with disabilities interested in higher education should ask about admissions requirements, including SAT or ACT exam scores. Some community colleges and junior colleges do not require such tests, and may not require a high school diploma for admissions. Many have various kinds of high-school equivalency diploma programs that carry college-degree credits and can be applied toward an Associate's Degree, and some carry no college credit. Increasingly, colleges offer "college experience" programs for students with intellectual disabilities to take courses on a college campus, and, in some cases, live in dormitories. Participation in such a program prior to graduation may be an appropriate component of a transition plan for a student still in the special education system. It is important to know that in most cases, these programs do not offer college credit.

Students do not have to tell a college admissions office about a disability, either on the application or during any interview; however, doing so will allow the college to provide information about services, and now many colleges allow students with disabilities to ask for special consideration during the admissions process, if needed.

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## ! Accommodations in College

In order to receive accommodations in college, it will be necessary to provide current documentation of the impact of the disability on the student. Colleges are not required to evaluate students, so it may be helpful to have the student evaluated during the last year of his or her special education program. All colleges are required by law to offer supports and accommodations to eligible students identifying themselves as having a disability, but these can vary greatly from college to college.

A growing number of colleges have specialized programs created to support and assist students with disabilities, including those with learning disabilities, dyslexia, autism spectrum disorders, and other conditions. Some are offered at no charge, while others require additional fees. High-school guidance counselors, and published guides to selecting a college, can provide information to help locate these programs.

## What are the considerations for students planning on work or day programs?

The service system for adults with disabilities is multifaceted and long waiting lists exist for some services. Often, case management responsibilities fall on parents or the student him or herself. Parents and students need to be prepared for the responsibilities associated with accessing and managing their own services.

Although there are laws against discrimination, there are no federal or state laws that guarantee services and supports for adults with disabilities. Therefore, while under the protective umbrella of IDEA, it is vital that planning take place and services are provided to ensure that students leave school with the academic, social, self-care, behavioral, and technical skills they need to pursue their goals, as well as the necessary linkages to service providers who can help them.

For students likely to need ongoing supports and services after graduation, it is wise to involve outside agencies in the transition planning process. Two key state agencies that provide services to adults with disabilities are the Division of Developmental Disabilities (DDD) and the Division of Vocational Rehabilitation Services (DVRS).

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## What is the ‘Summary of Performance?’

IDEA 2004 and New Jersey regulations require that a summary of performance be provided to each such student prior to the expiration of their eligibility for special education and related services. The summary must include the student’s Present Levels of Academic Achievement and Functional Performance, along with recommendations to assist the student in meeting postsecondary goals in the areas of Postsecondary Education, Employment, Independent Living, and Community Participation.

## TRANSITIONING TO ADULT SERVICES

### How is eligibility for DDD services determined?

In order to be eligible for DDD services, an individual must meet the following criteria:

- Have a mental or physical impairment or combination of impairments;
- The impairment is manifest in the developmental years, before age 22;
- The impairment is likely to continue indefinitely; and,
- The impairment results in substantial functional limitations in three or more of the following areas of major life activity:
  - self-care;
  - learning;
  - mobility;
  - receptive and expressive language;
  - self-direction;
  - economic self-sufficiency; and,
  - the ability to live independently.

### When can parents apply for eligibility for their child with a developmental disability?

DDD will only accept applications for individuals with disabilities who are at least 18 years old.

Families should apply for services from DDD as soon as the individual attains the age of 18. This will help ensure that eligibility for DDD services is established before the individual turns 21 and the educational entitlement ends. Additionally, if there is any concern regarding an individual’s eligibility for DDD services, applying early will allow an opportunity to address these concerns.

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## What services does DDD fund?

DDD funds three types of services for individuals with developmental disabilities who live in the community:

- day services, including supports for people who are employed;
- residential services, including individual supports that assist an individual living at home or elsewhere in the community; and,
- family support services that assist families caring for loved ones at home.

DDD also administers two Medicaid waivers: the Supports Program under the Comprehensive Waiver as well as the Community Care Waiver.

## Where can parents apply?

The application must be obtained from and submitted to the Regional DDD office, which services the area in which the individual with the disability lives. The application can be completed by the individual, or their parent or guardian.

## Can DDD have waiting lists?

DDD's regulations allow it to assign people to waiting lists when services are not immediately available. This applies to both residential and day programs.

DDD maintains two waiting list categories: Priority and General. The Priority waiting list is the only DDD waiting list that actually places people into services. The General waiting list is essentially a registry for people who do not meet the criteria for placement on the Priority waiting list. The Community Care Waiver ("CCW") waiting list is the waiting list for residential services, which can be years long.

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## How do parents have their child placed on DDD's waiting lists?

Individuals who meet the following criteria can be placed on the CCW waiting list with priority status:

- both parents are 55 years or older;
- the person is living with someone other than the parent who is not willing to provide care any longer;
- there is a risk of abuse, neglect, or exploitation;
- one parent has a chronic condition, which significantly limits the ability to care for the person; or,
- the person's health or safety is at risk because of behavior or physical needs.

As it can take ten to twelve years to reach the top of the CCW waiting list, it is vital that individuals request placement on this list as soon as the criteria can be satisfied.

DDD also uses a waiting list for day programs and vocational services. DDD regulations permit a person to be placed on a waiting list for day services five years prior to graduation. Therefore, for families of school-age children who have planned well, a waiting list should not be a problem. Even for individuals who are still on a waiting list upon graduation at age 21, it may be illegal for DDD to refuse immediate services despite its waiting list, particularly if serious regression is likely.

## What does DDD require before it will provide services?

DDD will only provide services to eligible individuals:

1. who have attained the age of 21, and
2. the current regulations require all individuals to be Medicaid eligible before services are provided.

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## Why is Medicaid vital?

DDD requires an individual to secure and maintain Medicaid eligibility in order to receive ANY service from DDD – day services, in home supports, residential services and self-directed services. DDD contends that any loss of Medicaid eligibility can result in the interruption or termination of services. Therefore, it is vital that families make sure they preserve Medicaid eligibility by ensuring that their family member with a disability keeps assets and income below certain limits, spends down excess assets, and/or has a special needs trust. Now more than ever, it is imperative that individuals, parents and guardians understand the Medicaid programs available and take the steps necessary to become and maintain eligibility.

## How can Medicaid eligibility be achieved?

The following is a brief explanation of four ways an individual can become Medicaid eligible.

### **1. Supplemental Security Income (SSI)**

SSI is a federal program that provides monthly cash payments to eligible individuals in need. In New Jersey, individuals who are determined eligible for SSI are also eligible for Medicaid.

### **2. Disabled Adult Child Status (“DAC”)**

An individual with a disability is sometimes eligible for Social Security benefits based on the work history of their parent. This usually happens when a parent begins collecting his or her own Social Security benefits. Often, the amount provided to the individual with a disability is above the income limit for SSI, therefore, the individual loses both SSI and Medicaid benefits.

In some instances the individual with a disability may be eligible for continued Medicaid benefits as a Disabled Adult Child (“DAC”).

### **3. Community Medicaid**

This program provides Medicaid to individuals unable to afford the health care they need.

### **4. New Jersey Workability**

This program offers full New Jersey Medicaid health coverage to individuals with disabilities who are working. The individual is charged a small premium under this program.

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## How are residential services and supports provided?

DDD states all residential services and supports in New Jersey must be funded through New Jersey's Community Care Waiver (CCW). This means that in order to receive residential services, an individual must apply for and be determined eligible for services under the CCW.

## The Importance of Advanced Planning

To ensure continued Medicaid eligibility, it is vital for families of an individual with a disability to create an estate plan which includes a Special Needs Trust ("SNT"). When a family plans ahead in this manner, the type of SNT created does not require a "payback" provision because the trust will be funded with assets belonging to the parents or other family members. This type of SNT is commonly referred to as a "third party" SNT. Absent proper estate planning, when the parents of the individual with a disability die; the individual may inherit assets that would jeopardize Medicaid eligibility. For more information on this topic, please visit our website at [www.hinkle1.com/category/estate\\_planning/](http://www.hinkle1.com/category/estate_planning/).

## What agency provides services for individuals with disabilities under the age of 21?

On January 1, 2013 the Division of Children's System of Care (CSOC) under the Department of Children and Families (DCF) assumed responsibility for determining eligibility and providing services for children and young adults with developmental disabilities under the age of 21.

Parents need to be aware of the following rules to ensure continued appropriate services are provided to their child.

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## What are the criteria for eligibility for services from DCF?

The DCF definition of a developmental disability is the same as DDD's. It means a severe, chronic disability of an individual, which:

- Is attributable to a mental or physical impairment or combination of mental or physical impairments:
- Is manifest before age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas of major life activity;
  - Self-care
  - Receptive and expressive language
  - Learning
  - Mobility
  - Self-direction
  - Capacity for independent living
  - Economic self-sufficiency

## What services can DCF provide for eligible individuals?

DCF can provide behavioral supports, in-home supports and, in some cases, residential placements.

## When will DCF provide residential placements?

DCF will not provide a residential placement if it is necessary to ensure the provision of a Free Appropriate Public Education ("FAPE"). Instead, in these cases the student's school district may be required to provide the residential placement.

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## When is a school district required to provide a residential placement?

Placement in a residential program must be provided, at no cost to the parents, if it is the option that allows the student to make meaningful educational progress. Often, residential placements are considered for students with behaviors, school avoidance issues and similar needs.

## What happens when a student who is residentially placed by his school district attains the age of 21 and his educational entitlement ends?

In some cases, the Division of Developmental Disabilities will continue funding these placements. Often, families in this situation will need the assistance of an attorney to secure uninterrupted funding for a residential placement. Families in this situation should take action at least one year before their child's educational entitlement ends.

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## State Resources for Transition to Adult Life In New Jersey

Agency	Phone	Web Site
Division of Developmental Disabilities	1-800-832-9173	<a href="http://www.state.nj.us/humanservices/ddd">www.state.nj.us/humanservices/ddd</a>
Division of Disability Services - Information and Referral Assistance	1-888-285-3036	<a href="http://www.state.nj.us/humanservices/dds">www.state.nj.us/humanservices/dds</a>
Division of Vocational Rehab. Services	609-292-5987	<a href="http://www.jobs4jersey.com/jobs4jersey/jobseekers/disable/">www.jobs4jersey.com/jobs4jersey/jobseekers/disable/</a>
Commission on Higher Education	609-292-4310	<a href="http://www.nj.gov/highereducation/">www.nj.gov/highereducation/</a>
NJ Transit Access Link	1-800-955-2321	<a href="http://www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=AccessibleServicesTo">www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=AccessibleServicesTo</a>
Commission for the Blind and Visually Impaired	973-648-3333	<a href="http://www.state.nj.us/humanservices/cbvi">www.state.nj.us/humanservices/cbvi</a>
Department of Education	609-292-0147	<a href="http://www.nj.gov/education/specialed/transition/agency.shtml">www.nj.gov/education/specialed/transition/agency.shtml</a>
Division of Mental Health and Addiction Services	1-800-382-6717	<a href="http://www.state.nj.us/humanservices/dmhs/home/index.html">www.state.nj.us/humanservices/dmhs/home/index.html</a>
Center for Independent Living	Visit website for county CIL info	<a href="http://www.njsilc.org">www.njsilc.org</a>
Social Security Administration	1-800-772-1213	<a href="http://www.ssa.gov/disability">www.ssa.gov/disability</a>
Statewide Independent Living Council	877-917-4500	<a href="http://www.state.nj.us/humanservices/dds/home/cntrindlivindex.html">www.state.nj.us/humanservices/dds/home/cntrindlivindex.html</a>
Division of Medical Assistance and Health Services	800-356-1561	<a href="http://www.nj.gov/humanservices/dmahs/home/">www.nj.gov/humanservices/dmahs/home/</a>

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# Notes

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## About the Authors:

**Ira M. Fingles, Esq.** has devoted his legal career to the representation of individuals with disabilities and their families. Fueled by his experiences growing up with his sister who has multiple disabilities, Ira received his JD from Temple University School of Law. He has provided legal representation in a variety of areas, including educational rights for students with disabilities, higher education, benefits, and services for adults with disabilities, guardianship, and estate planning. He has argued precedent-setting cases in federal and state court, and before administrative agencies in Pennsylvania and New Jersey. He has written extensively on topics related to disability law and has presented to disability groups across the nation. He is a member of the Pennsylvania and New Jersey Bars.

**S. Paul Prior** has spent his entire legal career representing people with disabilities. As the younger brother of a man with autism, he has a life-long commitment to disability law. His legal work has focused on special education, guardianship, financial entitlements, and access to appropriate services. A substantial part of his practice is devoted to assisting families in estate and trust matters. He has successfully argued leading cases before the New Jersey Supreme Court, Third Circuit Court of Appeals, as well as other state and federal courts. He served as a federal monitor overseeing conditions at state-operated institutions. He holds a JD from Seton Hall University School of Law, and serves on the board of directors of The Arc of New Jersey and Autism New Jersey. Previously, he served on the Board of Special Olympics New Jersey and the Eden Foundation. He is a member of the Elder Law Section of the New Jersey Bar Association. He writes and lectures frequently on topics concerning the law and disability as well as issues affecting siblings.

**Maria E. Fischer, Esq.** is personally committed to the field of disability law. The mother of a daughter with multiple disabilities, Maria's legal work focuses on guardianship, estate planning, and helping families of adults with disabilities access and retain appropriate services. She completed an internship at the New Jersey Department of Public Advocate, where she conducted legal research and drafted papers on civil rights, healthcare, education and administrative law. She also interned with the Family Law Clinic at Seton Hall University. Maria has been appointed to serve on the Board of Directors of Special Olympics New Jersey and The Arc of Mercer County. She earned her J.D. from Seton Hall University School of Law. She is a member of the Pennsylvania and New Jersey Bars.

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## About Hinkle, Fingles & Prior

Specializing in disability and elder law since 1974, Hinkle, Fingles & Prior offers a full range of legal services for people with disabilities and their families, and seniors. Many of the firm's attorneys have a family member with a disability, allowing them to combine their legal expertise and experience with personal life experience. The firm's attorneys have argued many of the precedent-setting cases affecting people with disabilities in New Jersey and Pennsylvania.

Practice areas include:

- Special education
- Access to adult services
- Eligibility for public entitlements
- Income and asset protection
- Wills, trusts, and estate planning
- Guardianship and surrogate decision-making
- Elder Law
- Estate administration

The firm maintains a multi-state practice, with offices in New Jersey in Paramus, Florham Park, Lawrenceville, Cherry Hill, and Wall, and in Pennsylvania in Bala Cynwyd and Plymouth Meeting. Attorneys are available to speak to parent groups at no charge on topics in law and disability.



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