



PERSPECTIVES *on disability law*



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Winter/Spring 2015

IN THIS ISSUE:

- 1 WHAT IS THE ABLE ACT AND HOW WILL IT HELP ME?
- 2 WHAT'S NEW IN SCHOOL SPORTS?
- 3 NEW JERSEY'S DYSLEXIA LAWS
- 3 FIRM SUPPORTS LEGISLATION ADDRESSING DDD'S "RETURN HOME NEW JERSEY" INITIATIVE
- 4 UNDERSTANDING "STAY PUT" IN SPECIAL EDUCATION
- 5 COMMUNITY CONNECTIONS

WHAT IS THE ABLE ACT AND HOW WILL IT HELP ME?

The Achieving a Better Life Experience (ABLE) Act was recently signed into law by President Obama. This is an exciting development in special needs planning and the act will likely give families a helpful tool in planning for the future of their child with a disability. Despite this fact, there are many pitfalls of which families should be aware. The ABLE Act is designed to create "tax-free" savings accounts for individuals with disabilities. At this point, federal regulations will be developed and individual states will start to implement the Act.

An important feature of ABLE accounts is that they are designed to supplement but not replace other means-tested government benefits such as Supplemental Security Income (SSI) and Medicaid.

ABLE accounts are much like 529 accounts for college savings and will have the same tax advantages as 529 savings accounts. ABLE accounts are designed to be funded with "after-tax" money, but the earnings in the account will not be subject to Federal income tax (although the earnings may be subject to state income tax). Also, there will be no tax when the money is taken out and used for education, housing, transportation, health aides, employment support, and other similar expenses.

An important feature of ABLE accounts is that they are designed to supplement, but not replace, other means-tested government benefits such as Supplemental Security Income (SSI) and Medicaid. As a result, ABLE accounts which meet the required guidelines should not interfere with government assistance benefits. However, there are some very important limitations to ABLE accounts. An individual will only be able to have up to \$100,000 in an ABLE account and still qualify for SSI. If an individual has over \$100,000 in an ABLE account, they will not be eligible

continues on page 2



Legislative leaders and advocates celebrate the passage and President Obama's signing of the ABLE Act in December.

WHAT'S NEW IN SCHOOL SPORTS?

WHAT IS THE ABLE ACT?

continued

to receive SSI benefits, but will still be eligible for Medicaid. Given the life expectancy of most individuals with disabilities, families should not rely upon ABLE accounts as their sole strategy in securing their child's financial future.

In addition, most families do not realize ABLE accounts provide that Medicaid and other government health care providers will receive the money remaining in the ABLE account after the beneficiary dies. There will also be limits on how much money can be put into an ABLE account each year (currently \$14,000 per year), and an individual will not be allowed to have multiple ABLE accounts. Finally, in order to qualify for an ABLE account, an individual must be blind or disabled as defined by the Social Security Administration, and the disability must have occurred before the age of 26.

While an ABLE account will likely be a nice savings vehicle, because of their limitations, they will not be a one-size-fits-all solution for individuals with disabilities. It will still be more advantageous for families to create special needs trusts to help preserve a child's future. To learn more about the benefits and purposes of special needs trusts, please see our other articles on this topic at http://hinkle1.com/category/special_needs_trusts/.

On June 19, 2014, Governor Christie signed legislation regarding the inclusion of students with disabilities in athletic activities. This is historic legislation and the first of its kind in the United States.

1) Why is the sports legislation important?

This legislation requires districts to ensure students with disabilities equal access and opportunities to participate in athletics, as well as provide opportunities for students with disabilities to participate in existing adaptive and Unified programs. This legislation applies to athletic programs including clubs, intramural, and interscholastic athletic activities.

2) Is my child entitled to play on a competitive team?

No, a student with a disability is not entitled to play on a school's competitive team. However, this legislation ensures that a student with a disability must be given an opportunity to try out for, and if selected, participate on a competitive team.

3) Can my child receive modifications and accommodations, if needed to participate in athletic activities?

Yes, each school district shall ensure the provision of reasonable modifications or services necessary to provide a student with a disability an equal opportunity to participate in athletic activities.

4) Are there any exceptions that would limit my child's opportunity to participate in athletic activities?

Yes, if inclusion of a student with disabilities presents an objective health or safety risk to the student or to others, or fundamentally alters the athletic activity. In either of these instances, the student may not be able to participate in the activity. However, in these cases, the school district shall make reasonable efforts to provide a student with a disability the opportunity to participate in existing adaptive or Unified sports programs.

5) My child attends an out-of-district school program. What are his rights under this legislation?

A student in an out-of-district school program has the right to participate in the athletic programs of the sending school district. There is, however, no requirement for the out-of-district school to create and provide athletic programs.



NEW JERSEY'S DYSLEXIA LAWS

NJ SENATE BILL ADDRESSES ISSUES WITH DDD'S "RETURN HOME NEW JERSEY" INITIATIVE

Firm provides testimony

Q: What is the law in New Jersey regarding Dyslexia?

A: New Jersey enacted a set of laws which, in part, defines the term "dyslexia" and requires certain educators to have a minimum of two hours per year of professional development related to reading disabilities. Most importantly, these laws require the state to provide local school districts with information on screening instruments that can be used to identify a student with dyslexia, and requires schools to screen any child who shows signs of dyslexia or other reading disabilities by the end of the first semester of second grade.

language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge." This is the definition used by the International Dyslexia Association and is widely accepted by reading experts.



Q: Under the law, what is dyslexia?

A: The law defines dyslexia as "a specific learning disability that is neurological in origin, and is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of

Q: What are the requirements for teacher training?

A: The laws' training requirements affect all general education teachers who teach kindergarten through third grade, as well as those who teach basic skills, special education, English as a Second Language, reading specialists, LDTCs, and speech language specialists. These professionals must take at least two hours each year of professional development on screening, intervention, accommodations and use of technology for students with reading disabilities, including but not limited to, dyslexia.

continues on page 4

The New Jersey Division of Developmental Disabilities' "Return Home New Jersey" (RHNJ) Initiative seeks to terminate out-of-state placements and force the return of people with severe disabilities to New Jersey. The Division contends that by forcing individuals to return to New Jersey, the State can easily access federal Medicaid funds which will cover a portion of the cost associated with the new placement. While the State's goal of maximizing federal Medicaid funds is a laudable one, the manner in which it is going about it is deeply flawed. The sudden and unilateral termination of funding to out-of-state placements – some of which have been funded by the State without complaint for half a century – is not only bad public policy and poor planning, it is unnecessary and cruel.

NJ Senate Bill 2600 remedies many of these flaws and helps families better advocate for and protect their children or siblings. The inclusion of a "grandfather clause," as well as provisions which allow for health and safety exceptions to a change in placement, are vital components of the bill. Such provisions will force DDD to work more collaboratively with families and will give families greater control over the process than they currently have.

"Families are now at the mercy of DDD and are far too often intimidated and pushed around by DDD in the agency's implementation of RHNJ. If enacted, this legislation will help level the playing field for families."

-S. Paul Prior, Esq.

Hinkle, Fingles & Prior provided testimony to the Senate Health, Human Services, and Senior Citizens Committee in support of S-2600, and the protections it offers families subject to the placement changes RHNJ forces. To read our entire testimony, please visit <http://hinkle1.com/testimony-in-favor-of-s-2600/>.

Q: What is required for the screening of dyslexia?

A: The law requires districts to screen for dyslexia and other reading disorders, and requires the use of evidence-based intervention strategies such as a multisensory reading program. Schools must screen any child who shows indicators of dyslexia or other reading disabilities by the end of the first semester of second grade. If the screening indicates the child may indeed have dyslexia (or another reading disability) he or she must receive a comprehensive assessment. If the assessment confirms a diagnosis of dyslexia or other reading disability, then the child will receive appropriate, evidence-based intervention.

Q: What is meant by "evidence-based" intervention?

A: One very important aspect of the law is that interventions for dyslexia be "evidence-based." This means that the strategies used to teach a student with dyslexia must be backed by research. The International Dyslexia Association defines "evidence-based intervention" as an instructional program or collection of practices that have been tested and shown to have a record of success. The strategies must be reliable, trustworthy, and have valid evidence to show that when the program or practices are used, children can be expected to make adequate gains in reading achievement.

Q: Is there a new special education category as a result of this legislation?

A: No. The new law defines the term 'dyslexia,' which is currently in federal and state descriptions of Specific Learning Disabilities.

Q: What does this mean for parents who suspect their child has a reading disability?

A: While the new definition of "dyslexia" may help to make it easier for students with dyslexia to receive specialized reading services, students are not automatically eligible for special education under IDEA, or for services through Section 504. Even with reading intervention, parents must remain vigilant and bring any concerns about their child to the attention of the school.

Dyslexia often occurs with other conditions. At any time, a parent or teacher who suspects that a child has a disability of any type can request referral for evaluation in order to determine eligibility for special education.

Also, just because a program is "evidence-based," does not guarantee reading success for every child. Parents should ask that teachers and administrators collect data tracking their child's progress in order to determine if the instructional strategies and routines are a good fit for that child.

Each year, school districts review and prepare individual education programs (IEPs) for the next school year. Regardless of where a child is currently placed, there is always the possibility that the district will attempt to change the child's placement. When this happens, it is often in favor of an in-district program.

Placement decisions are made by the IEP team, which includes the student's parents. A district cannot unilaterally move a student out of his or her current placement against the parents' wishes. Placement decisions must be made on an individualized basis and cannot be



made to conform to prescribed numbers or percentages of students in certain types of programs, nor can they be based on the cost of a particular placement or program. In fact, to do so is a violation of the Individuals with Disabilities Education Act (IDEA).

Increasingly, districts are establishing new in-district programs in order to serve students with particular needs, for example, those with autism. It is a red-flag if a district proposes to bring all students with autism back from an out-of-district program to a new in-district program. Such an attempt is a clear demonstration that placement decisions are not being made on an individualized basis.

continues on page 6

COMMUNITY CONNECTIONS



Special Olympics New Jersey 2014 Jingle Run

Team HF&P (above) was out in force with the largest team at the event with 76 people and raised over \$9,300 for SONJ!



Herbert D. Hinkle, Esq. Receives the Arc of New Jersey's Advocacy Matters Award

The Arc of New Jersey has honored Hinkle, Fingles & Prior founder Herbert D. Hinkle with its Advocacy Matters Award. Above (left to right) are Executive Director of The Arc of New Jersey, Tom Baffuto; Herbert D. Hinkle, Esq.; and Arc of New Jersey Board President Bob Hage.



Children's Hospital of Philadelphia Buddy Walk

Hinkle, Fingles & Prior staff (above) participated in the Children's Hospital of Philadelphia 2014 Buddy Walk.

Special Olympics New Jersey Chairman's Award

Maria Fischer, Esq. (right) receives Special Olympics New Jersey's Chairman's Award from then-Chairman Donald Slaght. Ms. Fischer was also elected as First Vice-Chair of SONJ's Board of Directors.



Devereux Family Resilience Conference

Maria Fischer, Esq. (above) attended the Devereux Family Resilience Conference, and presented a conference workshop session on Legal Issues in Guardianship and Estate Planning.



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UNDERSTANDING “STAY PUT” *continued*

Districts may also propose changing the intensity or duration of related services and therapies; for example, from 1:1 session to group sessions or consultative services; or from 30 minutes to 20 minutes.

Under the law, parents have a right to challenge any proposed change in placement, program, or level of service. If a parent disagrees with a district’s attempt to change the placement or otherwise alter services in the IEP, the parents should immediately file for mediation or a due process hearing. By doing so, parents trigger the stay put or pendency provision of the IDEA. This provision essentially freezes the last agreed upon IEP while the parents and the district are contesting the issue of the student’s placement or services. The student remains in his current placement and continues to receive services under the last agreed upon IEP until the dispute is resolved.

Before a change in a student’s placement can occur, parents must be provided with written notice ten days prior in Pennsylvania and fifteen days prior in New Jersey.

Be prepared; such written notice will often take the form of a revised IEP, but any written notice will suffice. If parents do nothing within the timeframes mentioned above, the school district’s proposed changes will take effect. Refusing to sign the IEP is not enough. Stay put is triggered only if the parent files a request for mediation or a due process hearing in the specified timeframes, then the student must remain in his current placement and services must remain at the same level.

It is essential that parents act quickly if their school district provides written notice changing the student’s placement, program, or services. Otherwise, unless a very limited exception can be used, the student’s placement will change regardless of whether the parents agree with the decision or refuse to sign the IEP.

