

PERSPECTIVES *on disability law*



Hinkle, Fingles & Prior
Attorneys at Law



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Partner Profile



Ira M. Fingles has devoted his legal career to the representation of individuals with disabilities and their families.

His motivation to enter this field stemmed from his experiences with his sister, who has multiple disabilities.

Ira has represented individuals with disabilities in areas including special educational rights, benefits and services for adults, guardianship and estate planning. He has argued precedent-setting cases in federal and state court in Pennsylvania and New Jersey, and has presented to disability groups across the nation.

Ira volunteers time to the Autism Society of America – Greater Philadelphia Chapter, the Penn Autism Network Advisory Committee, and serves on the board of Devereux. He received his JD from Temple University School of Law and is a member of the Pennsylvania and New Jersey Bars. He and his family live outside of Philadelphia.

How Special is YOUR Special Needs Trust?

Many families planning for the future of a child or grandchild with disabilities establish a Special Needs Trust. A trust is needed so that money can be available to the person with a disability while at the same time, preserving government benefits.

Occasionally a client will ask us to review a special needs trust prepared by another law firm. Unfortunately, many of these documents either fail to conform to the legal requirements for a special needs trust or fail to anticipate future changes in benefit delivery systems and therefore limit the trustee's ability to meet the changing needs of the disabled individual.

Poorly written trusts can actually jeopardize the individual's eligibility for government benefits, and may lack the ability to protect and enhance the beneficiary's life.

When we develop – or review – a Special Needs trust, we look to ensure that it not only has the ability to preserve eligibility for benefits but also demonstrates awareness of the service delivery system and trends for the future.

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Back to School Learning: New Video Advocacy Series

Special education and disability law is complex and hard to understand. In partnership with ASAH, a statewide network of approved private schools serving students with disabilities, Hinkle, Fingles and Prior has developed a series of short videos – most under 10 minutes – to help families understand areas of special education and disability law that cause the most confusion.

The question and answer style video series includes videos on: Eligibility for Special Education; Extended School Year; Myths Surrounding Least Restrictive Environment; The “Stay Put” Provision of IDEA; Transition from School to Adult Life; Graduation Considerations; Placement Determination; and Guardianship and Estate Planning.

The first video, Estate Planning, is posted on our website, and can also be found on Youtube at : <http://www.youtube.com/watch?v=XFVeCMpRs90>.

Watch for future releases!



Hinkle, Fingles & Prior, Attorneys at Law



Fast Facts: The Right to Vote

1. All citizens over the age of eighteen and properly registered have the right to vote.
2. The mere fact a person has a disability, or has a guardian, is not an automatic bar to voting.
3. Only a judge can deprive an individual with disabilities of their right to vote. Clerks, election officials, poll workers or other officials involved in the election process, cannot make the decision.
4. People who live in an institution cannot be barred from registering to vote, so long as they can answer the few basic questions asked of any other citizen on a voter registration form such as name, address, and age.
5. Absentee ballots cast by voters hospitalized in a state-operated psychiatric hospital cannot be discounted based on the assumption that they lacked the capacity to vote.
6. Anyone seeking to challenge an individual's right to vote has the burden of proving the specific person in question lacks the capacity to vote.

DID YOU KNOW? In 2007, the New Jersey Constitution was amended to further clarify this right, stating that only a person who has been determined by a court of law to “lack the capacity to understand the act of voting” can be deprived of the right to vote.

ATTENTION PENNSYLVANIA RESIDENTS: A recently adopted Pennsylvania law had required all voters to present a valid photo ID, which includes expiration date, each time they go to the polls. The law also includes new rules about how to vote by absentee ballot. However the Pennsylvania

YOU HAVE THE RIGHT:

- You have the right to have someone you choose help you in the voting booth or show you how to use the voting equipment.
- You have the right to take some extra time to vote.
- If you make a mistake while voting, you have a right to have someone explain how to fix the mistake.
- You have the right to make up your own mind on how you want to vote on any ballot question.
- No one can tell you how to vote or who you should vote for.

Turned away from the polls?

If you have trouble voting on Election Day, call your county Board of Election. You are allowed to have someone call on your behalf. The Board of Election's staff should be able to address and correct the situation that day.

Commonwealth Court stopped the full enforcement of the law for the November 6th, 2012 Election. Under the terms of the Court's decision, you may be asked to show your ID at your polling place but YOUR ID IS NOT REQUIRED TO VOTE. Call the PA Voter ID Coalition at 1-866-OUR-VOTE (866-687-8683) or the PA Dept of State at 1-877-VotesPA (877-868-3772) if you have questions or need help.

Giving Back . . .

Initiative Will Help Students with Complex Disabilities Make the Leap to Adult Life

Hinkle, Fingles & Prior is proud to support ASAH, New Jersey's network of private schools serving students with disabilities and their families. As part of the effort, the firm will help ASAH launch an initiative designed to support effective transition from school to adult life, with workshops, IEP clinics, webinars and other services at ASAH member schools statewide. The firm will also be underwriting a scholarship for a graduate of an ASAH school. To learn more, go to www.asah.org, or call ASAH at 609-890-1400.



How Special is Your Special Needs Trust?

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For example, a well-written Special Needs Trust will preserve eligibility for services while still allowing for the purchase of private services if public programs are not of suitable quality. An overly restrictive Trust might be unavailable to pay for an addition to the home of a sibling in which the beneficiary might someday reside, or to pay for a sibling's travel to visit the beneficiary.

With the advent of self-directed services we are on the cusp of a revolution in the delivery of services. New models might involve the contribution of an interest in real estate or the transfer of other valuable resources up front to secure services of choice. Poorly worded trusts could hamper participation in such programs.

Government benefits and the service delivery system are dynamic and a trust might not be flexible enough to be compatible with the system years from now. A focus on preserving eligibility rarely takes this into account.

A SPECIAL NEEDS TRUST HAS FOUR CHIEF PURPOSES:

1. to preserve eligibility for government services;
2. enhance quality of life;
3. protect a vulnerable beneficiary; and,
4. avoid government recoupment.

These progressive provisions enhance the value of the trust for an individual with a disability. It is vital that a trust be written to comply with governing law and yet be flexible enough to meet the future needs of the beneficiary.

As with all estate planning documents, special needs trusts should be reviewed every five to ten years, or when family circumstances change.

Special Education: Independent Evaluations

Often, when the parent of a child with disabilities does not agree with a school district's evaluation findings, they request an independent evaluation. This is paid for by the school district.

Some reasons parents may want to request an independent evaluation include:

- You believe the original evaluation was incorrect.
- The original evaluation was not done in your child's native language.
- You believe that the original evaluation was incomplete and additional tests are needed.
- The evaluation was not done with the needed accommodations (e.g., in Braille or administered by someone who knows sign language).



This spring, the U.S. Department of Education notified New Jersey officials that the State's special education rules concerning independent evaluations for students with disabilities violated federal law and must be changed immediately.

The State code had allowed local districts the opportunity to conduct an assessment in an area not covered by the initial evaluation or reevaluation before the parents were granted the independent evaluation.

Therefore to be in compliance with Federal law, when a parental request for an independent evaluation is received, a district must provide the evaluation at no cost to the parent, unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination is made following the hearing.

Legal Victories

- Hinkle, Fingles and Prior got the New Jersey Division of Developmental Disabilities (NJDDD) to reverse itself on the issue of services for a young adult with high functioning Asperger's syndrome, allowing the young man to access self-directed funding to pay for services.
- The firm represented the father of a young woman with Down syndrome in a hotly contested guardianship matter. Their victory on his behalf allowed him to remain active in his daughter's life following a divorce.
- The firm represented a woman with developmental disabilities whose funding for residential services was terminated by NJDDD after she had been receiving residential services in the same location for 49 years. Although NJDDD refused to reverse itself, attorneys at the firm persuaded the New Jersey Superior Court, Appellate Division to restore funding for the woman's program during the pendency of a hearing.
- The firm represented a 19-year-old student with autism who had been expelled from a private school because of behavior. The negotiated settlement with the local board of education allowed the student to secure a customized transition program with highly trained staff.

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 2012 and spring 2013 by using our new on-line workshop request or by calling the office directly at 609-896-4200.



Representing people with disabilities and their families since 1974

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