

CLANCY & --- **ASSOCIATES** LTD.

A Full-Service Special Needs Planning Law Firm

Our Firm

We are a full-service, special needs law firm dedicated to planning for individuals with special needs and their families.

- Special Needs Trusts & Planning
- Guardianship
- Educational Advocacy
- Life Planning
- Government Benefits & Applications

Our Firm

- Introductions

Katie Clancy, JD, Attorney & Parent

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Government
Benefits –
Alexandra
Baig

- Our team helps students, their parents and professionals who work in the transition space to understand the various benefits available and how to secure them.
- We provide education on Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Social Security for “Disabled Adult Children” (DAC), Medicaid Waivers and Medicare, and the importance of the PUNS list (the Illinois Prioritization of Urgency of Needs of Services).
- There are 5 things we can do to help students and their parents maximize these valuable government benefits.

1. Clearly explain what it means to “have a disability” for the purposes of Social Security Medicaid and Medicare.

- **First**, the applicant must have a medically determinable physical or mental (including behavioral or executive functioning) impairment that is expected to last more than a year or end in death AND
- **Second**, the impairment must be such that it, along with related conditions, prevents the applicant from performing Substantial Gainful Activity (SGA).
- ***SGA is delineated by the capacity to earn more than \$1,310/month, gross (2021) or \$2,190/month if blind.***

2. Work with parents to extract and compile evidence from medical and educational documents that

- a. Clearly portrays the student's disabling condition(s) in a way that most closely matches the Social Security Adult Listing of impairments (Bluebook)
- b. Clearly explains the extent of support the student would need to work and WHY the student is unable to perform SGA.

3. Work with students and parents to employ the appropriate legal and financial tools so that the student's financial situation will not preclude her/him from accessing benefits.

- a. Ideally, all required financial reconfiguration will take place before the student turns 18 to pave the way for successful benefits applications
- b. If the student is working and earning money, the financial requirements are significantly more complicated.
- c. If a parent is close to retirement age, the financial requirements are significantly more complicated.

4. Explain to parents what types of Out of District evaluations will help substantiate the student’s application for benefits specifically by speaking to the student’s capacity to work in a competitive employment situation.
 - a. Act as a liaison and source of referrals to out of district evaluators with proven track records
 - b. Work with parents and evaluators to employ “Social Security speak” in reports

5. Apply for Government benefits for the student the month after his/her 18th birthday.

- Well before this milestone, we assist the family to obtain and organizing all medical, psychological, and educational (IEP) reports for your child, as well as any PUNS list and/or DHS correspondence.
- We communicate with Social Security throughout the SSI/SSDI process on the student's behalf.
- Families should not worry if the student is past 18. We can still assist her/him to apply and minimize benefits lost.

Top 5 Legal Planning Opportunities at Transition Time

- Parents are overwhelmed and worry endlessly that they could miss an opportunity for their child
- We work with families who are late to the game, or have missed chances to participate in valuable benefits and programs
- Why? ***they didn't know / or don't know how to start***
- ***Lack of knowledge is a problem across all demographics***
- Unique opportunity to build rapport and trust -- looking out for them beyond the IEP Table.
- You can be a valuable resource
- We recommend introducing these issues when you begin Transition Planning at 14.5

Legal Issues – Katie Clancy

1. Register for the PUNS list.

“PUNS LIST” defined “Priority of Urgency of Needs System”

- Illinois does not have enough funding to provide services to all who need them.
 - The “PUNS” List is a waiting list of people who have Developmental Disability and are waiting to receive services
 - 23,000 individuals
 - Services include In-home support, residential living, job coach, respite services, day programming, transportation, therapies, equipment and much more
 - Usually adults “selected” but occasionally children under 18 are selected where child’s needs are complex.
 - Encouraged to register now, when records documenting the DD are current and available
 - Waiting list, not guarantee (5-7yrs upon 18)
- EASY TO REGISTER!!

****Handout included in materials.***

2. Supported Decision Making a.k.a. “Do I need to obtain Guardianship?”

- At age 18, a person can make his or her own decisions; parents lose legal ability to remain in control, or even involved, in decision making.

This fact causes parents great concern!!

- What kinds of decisions are we talking about?
- How can parents best support their young adult child with disabilities as they navigate decision making?
- This does not necessarily mean guardianship is appropriate. Less restrictive alternatives....

Legal Issues – Katie Clancy

Common tools to tell parents about: Guardianship or Powers of Attorney

- Remind parent that the child, at age 18, will have the power to make all of his or her own decisions
- Guardianship should not be the automatic go-to solution
- Use least restrictive approach
- Parent should consult attorney to evaluate legal tools and most appropriate for child.
- Consider health care decisions, relationships, ability to live independently, understanding decision to be made and consequences of decision, managing employment, personal safety, vulnerability / threat of exploitation.

Legal Issues – Katie Clancy

3. Apply for SSI & Medicaid

- Best time to apply is most often age 18
- Records are fresh and available (SSA likes them within 12 months of application)
- The longer parents wait, the more complicated the Application process becomes
- Waiting is wasting money (SSI = \$10,000 annually)

4. Divorced Parents

- Child support ends when child is “emancipated.” What does “emancipated” mean?
Assumption of age 18. Not appropriate if child has a disability
- If child support continues beyond age 18, trust planning is necessary as child support will affect SSI eligibility
- Guardianship considerations may get complicated. Which parent will be guardian?
- Unfortunately, if parents divorce before disability becomes apparent, divorce attorney may not have addressed these issues. Additionally, few attorneys are aware that a child’s disability must be addressed in a divorce proceeding.

5. Special Needs Trusts and Planning

- Remember the \$2,000 Rule. Parents need to be on high alert for SSI Planning.
- Special Needs Trusts allow child to receive inheritance and funds from others without jeopardizing their government benefits.
- Trusts can help someone work, earn some money, and remain on benefits).
- Trusts outline life planning goals and support, and the child’s “team” when parents die.
- Parents must carefully plan for their own demise beyond just financial planning.

- Timeline handout

As our team evaluates each child's current IEP/Transition Plan, we look for the following:

- Identify and formulate the child's and family's goals for adult living and work. Assist with building a Transition Plan that incorporates real-life experiences, training and applicable classes (including post-secondary) that directly respond to those goals.
- Guide the IEP Team through accessing as many community-based resources as possible so that the student's support can continue post age-22.
- Assist IEP Team by identifying additional school personnel, gateway, agency or private staff, where necessary to accomplish child's goals; coordinate services and goals for short and long term implementation after transition; establish bridge from transition age (18-22) to adulthood, so supports and services are not lost on 22nd birthday.

Scenario to Consider:

Given the following facts, do you think that the student qualified for Social Security?

- Medical Diagnosis of Autism Spectrum Disorder, Sensory Processing Disorder, Anxiety, and Aggressive Disorder
- Educational Eligibility of Autism and Intellectual Disability
- Eighteen (18) years old
- Currently educated in a therapeutic school, full-time
- Extreme behaviors both in the therapeutic setting and in the home environment
- Never worked, either in school or in the community
- IEP Document includes a Behavioral Intervention Plan (BIP) but mostly focuses on student's strengths and growth shown in the educational setting

No – He was denied Social Security supports

Per the Auditor: Given the documentation in the current IEP document, the application would never be approved without a follow-up video consultation

Points shared by the Social Security Auditor:

- Lack of data in the IEP document, as related to work opportunities
- Reports in the IEP document only focus on the positive and growth the student has made over the past year
- Limited data as related to specific deficits

- As it applies to the educational setting . . .
 - Social Security applications will closely analyze the most recent re-evaluation and current IEP
 - Schools regularly receive requests (and follow-ups) for rating scales and team input – truly are looking for performance in the classroom and work study settings
 - Who should participate in providing input? Workload Managers, Related Service Providers, Guidance Counselors, General Educators

Five "Take-Aways"

1. Focus on the positives but also consider the deficits
2. Present Levels and Transition Planning are the two items of the IEP Document that are closely analyzed for Social Security purposes
3. Consider adding depth through including the Out of District Evaluations
4. Data! This includes not only test scores but also should include the skills, as generalized to the classroom
5. Think outside of the box on work opportunities and find ways to take data

1. Supports required in the educational environment should be clearly outlined and documented
 - Focus on the positives but also consider the supports needed in the educational setting and in the work environment
 - Use Present Levels sections to outline levels
 - Document supports!

2. Present levels and transitional planning are the two items most closely analyzed

- Please be specific in the skills
- Include all relevant data
- Discuss performance both within the educational setting, as well as how it applies to the employment setting

3. Consider adding depth by incorporating private evaluations into the present levels

- Helps to illustrate comprehensive needs
- Supplements any potential lack of data the team may experience in between eligibility conferences

Sample -

(1) Julio is a great kid! He gets along well with others in the classroom and is a joy to have in class. Julio's response to his peers has increased over the course of the semester.

Instead, consider the following:

"In the classroom, over the course of the semester, Julio has been able to positively and verbally respond to his peer's greetings with 80% accuracy. This greeting is typically in the form of a one-word response, completed with minimal eye contact. As generalized to Julio's current work study program, over the course of the last seven months, in the work environment, the team, has also seen growth in Julio's response to other's greetings. This growth is evidenced across all work settings and has risen from a baseline of 50% response rate to a 70% response rate."

Sample -

(2) Shaleen's grades are all in the passing range. Her favorite class is math, as this is an area of strength for her.

Instead, consider the following:

"Shaleen's relative strength is in the area of math. Within her last re-evaluation, Shaleen scored in the 68th percentile in the area of math computation and in the 63rd percentile in the area of math application. This score mirrors the results from the outside evaluation district received on 03.01.20 in which Shaleen scored in the 67th percentile in both skill areas. In her work study program, Shaleen is able to generalize these skills when requested to make change for a customer. With verbal prompting by her job coach, Shaleen has been able to produce the correct change with 80% accuracy across the course of this past semester."

4. Data! This includes not only test scores but also should include the skills, as generalized to the classroom and work environment

- Focus of Social Security: "the extent to which kids have the ability to work"
- Specificity will also assist with State Reporting

5. Think outside of the box on work opportunities and find ways to take data

- Data options

 - Persistence

 - Independency

 - Pacing

 - Need for breaks due to medical needs

 - Attendance

 - Frustration Level

 - Interaction with Others

- Data methods

 - Anecdotal Notes

 - Work Study Updates

Training and Workshops

- Understanding Government Benefits
- Letters of Intent
- Special Needs Trusts
- ABLE Accounts
- Life Planning & CILAs
- Supported Decision Making
- All About Assessments
- Transition Planning & More
- Writing Defensible IEPs

Contact Information

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