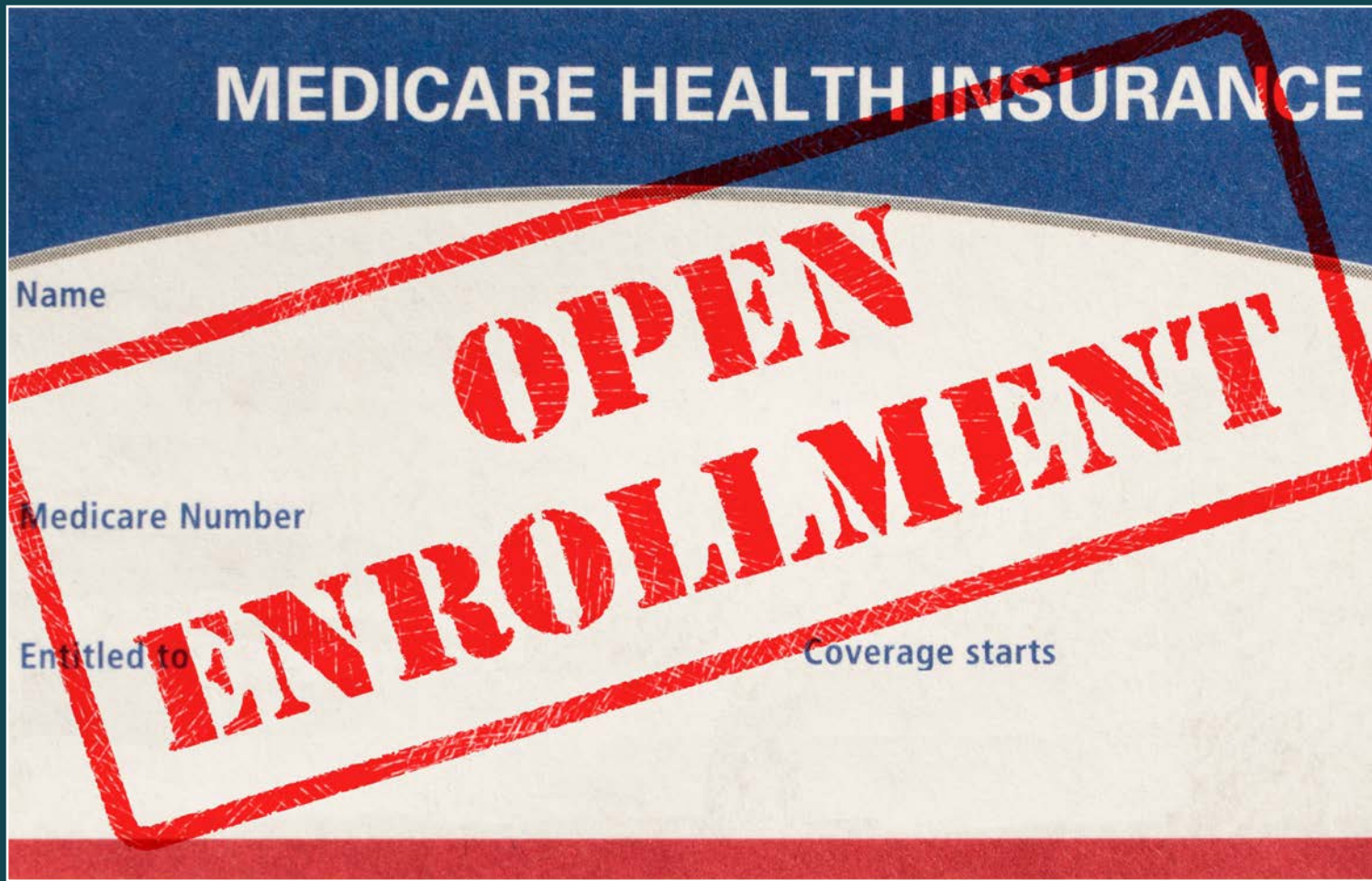




Elder Law and Special Needs Planning

November 2023 Newsletter

FEATURED ARTICLES



Your Health, Your Choice: A Guide to Medicare Open Enrollment

The Medicare open enrollment period runs through **December 7th, 2023**. Medicare adjusts costs, coverage, and accepted providers on an annual basis. If you have received “Evidence of Coverage,” or an “Annual Notice of Change,” from Medicare, now is the time to review your coverage, and, if necessary, make changes to your Medicare healthcare plan to better suit your needs for the coming year. Any changes made will take effect on January 1, 2024.

For example, beneficiaries can switch from original Medicare, which is managed by the federal government, to a privately managed Medicare Advantage plan, and vice versa. Original Medicare includes Medicare Parts A and B. Part A covers treatment from hospitals, skilled nursing facilities, and hospice. Part B covers doctors’ services, outpatient treatment, medical supplies, and preventive services. Beneficiaries of original Medicare can also add prescription drug coverage through Medicare Part D, as well as coverage for additional out-of-pocket expenses through the Medigap program.

For those who require insulin, as part of the Inflation Reduction Act, the shared cost for insulin will be capped at \$35.00 per month for recipients of enrolled in a Part D program. Similarly, those who have opted into Part B and who use an insulin pump will be entitled to the same price cap. In addition, certain vaccinations, including those for Shingles, Tetanus-Diphtheria, and Whooping Cough, will be free for those who have opted into a Part D plan.

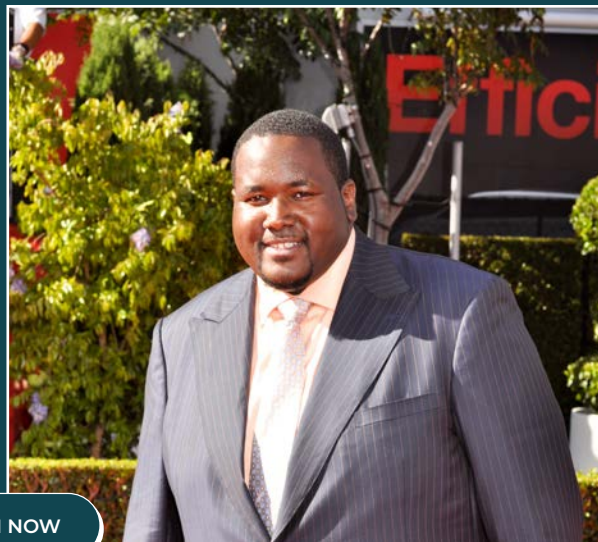
For more information, as well as tables reflecting new Part B premium rate increases applicable to high income beneficiaries, click here for the Centers for Medicare and Medicaid Services website. Our Elder Law attorneys at Mandelbaum Barrett PC are here to answer any questions you may have.

The Michael Oher Conservatorship

In his latest vlog, Mandelbaum Barrett PC Elder Law and Special Needs Attorney, **Donny Dennison, Esq.** breaks down the current status of the conservatorship of **Michael Oher** and how it got to this point.



DONALD DENNISON | ASSOCIATE
ELDER LAW PRACTICE GROUP



Do You Need a Spendthrift Trust?

The aging population is expected to transfer \$30 trillion in the coming years, per **Forbes**. According to the **Survey of Consumer Finances**, the median inheritance is \$69,000; the median for trust fund wealth transfers is \$285,000.

Many individuals planning their legacies wish to provide for their families and loved ones. Yet an **Ohio State University** study determined that those who receive an inheritance spend half. One-third of those who received an inheritance spent it all within two years and had negative savings. That said, a typical inheritance may not provide sustained financial security to beneficiaries.



Creating a spendthrift trust for your loved one can limit their spending and protect your wealth. While this type of trust may come at the expense of their autonomy, it can provide them with greater financial security.

What Is a Spendthrift Trust?

A spendthrift trust protects beneficiaries who may need help managing their finances responsibly. The trust preserves the beneficiary's inheritance for use over an extended period.

Spendthrift trusts work by giving a trustee, rather than the beneficiary, the power to make financial decisions. The trustee manages the trust assets and distributes funds to the beneficiary for their needs and support.

The trust's terms outline the trustee's discretion in making distributions, which can be limited or flexible. The creator of the trust, or grantor, may leave the timing and amount of distributions up to the trustee. Or, they may opt to establish a fixed schedule.

These restrictions prevent the beneficiary from squandering the assets.

The Spendthrift Clause

An essential feature of a spendthrift trust is the spendthrift clause, which protects the contents of the trust. Under the clause, the beneficiary cannot satisfy debts with their interest in the trust. Should the beneficiary have debts or a civil judgment against them, the creditors cannot obtain the trust assets.

Why Would Someone Create a Spendthrift Trust?

You may want to provide for a loved one but have concerns about who they will use the money. This is where a spendthrift trust can serve as a suitable option.



Spendthrift trusts can benefit the following individuals:

- Children – Parents often have concerns about how their minor and young adult children will use an inheritance. Minors typically need more life experience to make independent financial decisions. Some parents want to provide for college-age adult children but worry about giving them full access to the funds. Parents can determine when their children receive the funds (for instance, when the child reaches a certain age).
- People who are not good with money – Some adults struggle with financial planning and impulse control. For these individuals, a spendthrift trust can ensure a steady source of support.
- Vulnerable individuals – People who are susceptible to external influences that threaten their financial well-being can benefit from the security and structure of a spendthrift trust. If your loved one has been taken advantage of before, you may worry that they will be exposed to improper influence again.
- Those with addiction disorders – A spendthrift trust could prevent a beneficiary from exhausting the trust fund to support an addiction to gambling, illicit substances, or compulsive spending.

What Are the Benefits and Drawbacks of Spendthrift Trusts?

Spendthrift trusts have several benefits:

- Shielding assets from creditors and lawsuits.
- Providing your loved one steady income stream without allowing them to exhaust the trust through overspending. This can be particularly helpful if you have concerns about your loved one's ability to make money independently.

- Preserving generational wealth and preventing your loved one from blowing a significant portion of their inheritance.

Encouraging responsible money habits. Providing a younger person with full access to the trust only after they turn 21 can help them develop budgeting skills. Likewise, you may choose to limit them to a certain amount of monthly income.

Yet these types of legal arrangements can also have drawbacks for some.

- They can be expensive to create and maintain. [SmartAsset](#) reports that setting up a trust can cost between \$1,500 and \$2,500. (For many, however, the cost is worth the benefits, as they protect their loved ones' financial future.)
- Legal disputes may arise. If the beneficiary wants to receive all the funds prematurely, they could challenge it in court. In instances with multiple beneficiaries, they may fight over the contents of the trust.
- As the trustee has significant discretion, the trust can be vulnerable to mismanagement. Selecting a trustworthy individual or entity to serve as a trustee is crucial.

Consult With an Attorney

If you want to learn more about creating a spendthrift trust to provide for your loved ones, [contact the Elder Law attorneys at Mandelbaum Barrett PC](#). They can help you decide whether a spendthrift trust is right for your unique situation.



▶ WATCH NOW

11 Things You Can Do Online Via the Social Security Website

The Social Security Administration (SSA) website hosts a wealth of online tools that offer you convenient access to benefits information. To make the most of these tools, simply create a [my Social Security](#) account online. It is free to set up a mySSA account.



More than 65 million people are currently collecting Social Security benefits. Whether or not you are already receiving these benefits, there are numerous services you may be able to take advantage of through the SSA website. These include the following:

1. Determine whether you are **eligible** for Social Security – in less than 10 minutes.
2. Apply for **Social Security benefits** (Gather all the details that you'll need to complete the application process, including your bank account information, recent employment history, your Social Security number, your spouse's Social Security number, and the names of your **eligible children**).
3. Check on the status of your application.
4. Update changes to your name, phone number, email address, or mailing address.
5. Replace your **Social Security card** if you've misplaced it, damaged it, or have had it stolen.
6. Review your Social Security statements (View a **sample statement**).
7. Get a personalized estimate of how much your **monthly retirement benefit** will be, based on your age.
8. Secure proof of your benefits with a verification letter (also known as a proof of income letter or benefits letter).
9. Set up direct deposit for your monthly benefit check (or update your banking information).
10. Complete the application process for **disability benefits**.

11. See the schedule for your upcoming, as well as your past, benefits payments.

How Much Can I Expect to Get in Social Security Benefits?

It depends, and the amount also typically adjusts a bit each year.

The maximum amount you can receive per month once you are at full retirement age is \$3,627, as of 2023. Note that, on average, retired workers are receiving considerably less than that – **\$1,827 per month** in 2023.

The SSA announces its annual cost-of-living adjustment (COLA) each fall for the upcoming year. In large part due to inflation, the COLA for 2023 saw its biggest increase in Social Security benefits in more than four decades – almost 9 percent.

How much you will receive depends on factors such as:

- the length of your work history,
- your age,
- how much you earned during your employment,
- whether you're still working,
- and, in some cases, the state where you reside.

To learn more or to create an account, visit the [mySSA account](#) homepage. **The Elder Law attorneys at Mandelbaum Barrett PC are always available to answer any questions you may have.**



▶ WATCH NOW

What are Geriatric Care Managers?

In her latest vlog, Elder Law attorney **Jacqueline Yarmo** discusses her personal experience using **Trish Colucci Barbosa, RN-BC, CCM, LNCP-C**, Principal Geriatric Care Manager at **Peace Aging Care Experts, LLC** for assistance with her family member's care. Jackie describes what the Geriatric Care Manager's role is on the care team and why you should consider seeking their advice, if needed, for the best treatment plan for your loved one(s).



5 Reasons Why Your SSDI Claim Could Be Denied

If you are applying for Social Security Disability Insurance (SSDI) payments, you may be wondering what are common reasons for denial of an SSDI claim.

What Is SSDI?

SSDI is a program administered by the Social Security Administration (SSA). It pays disability benefits to those who cannot work due to a medical condition that is expected to last at least one year or result in death. SSDI does not give money to people with a partial disability or short-term disability.

To apply successfully for SSDI, a person must meet the SSA's **disability criteria**. SSA defines disability as a condition that significantly limits a person's ability to do basic work-related activities for at least 12 months.

In addition, the applicant (or their spouse or parent) must have worked a certain amount of time within a recent timeframe and in a job where they paid into the Social Security system.

If approved, an applicant's monthly SSDI payment amount will be based on their lifetime average earnings covered by Social Security. The SSDI payment may be reduced if the applicant receives workers' compensation payments or other public disability benefits, such as state and civil service disability benefits. Under some circumstances, your children may also receive a monthly benefit.

Continued on next page...



Common Reasons for Denial

Although millions of people apply for SSDI yearly, only a small percentage get approved. For example, in 2022, approximately 3 million people applied, but SSA only made 543,445 SSDI awards.

So, why do such a large percentage of claims get denied? Here are five common reasons.

1. Insufficient Medical Evidence

A common reason SSDI claims are denied is that the SSA disagrees that an applicant meets its disability criteria. This is usually because the application lacks adequate medical evidence supporting the person's claim they are disabled and unable to work.

Medical records need to document not only the existence of a disability, but also that this condition has interfered with a person's ability to work. Medical records that do not have a clear diagnosis, are sparse, or do not have any doctor's notes on how a specific condition has limited your work abilities will not support an SSDI claim.

For example, if you have not been seeking medical attention for your condition or have inconsistent or insufficient medical information in your records, you may face a denial of your claim. It is essential to try to seek medical care as soon as possible and discuss with your physician how your disability is affecting your work life.

You may also be able to supplement your medical file and SSDI application with any doctor's notes that excused you from work activities or asked your employer to limit your activities, or any records of the time you had to take off from work. So, do not throw these records away.

2. Multiple Applications and Failure to Pursue the Appeal Process

Another common issue is when a person submits another application instead of appealing a denial. If the SSA reviewer sees you were previously denied benefits based on a similar application, you may find yourself being denied once again.

SSDI applications are frequently denied because they don't have enough information to enable the SSA to award you SSDI benefits. It is better to appeal a denial first before submitting a new application. An appeal comprises multiple levels, so you can correct or supplement your application through this process.

The first level, called reconsideration, is where you ask the SSA to take another look at your request. It is not uncommon for an applicant to be denied again at this stage. The next step, where you appeal before an administrative law judge, is where you may have more success. You can testify about your disability and how it affects your life and ability to work.

Beyond this, there are two further stages of appeal – requesting a review from the SSA's Appeals Council and filing an action with the federal district court. None of these stages should be undertaken alone. You should seek the counsel of your attorney with any appeal.

3. You Earn Too Much

If you are working and making more than a certain threshold that qualifies as "substantial gainful activity" (SGA), your claim for SSDI may be denied. The SSA typically will not approve an SSDI benefits award if your earnings are more than \$1,470 monthly (in 2023).

4. Your Condition Is Not a Qualifying Medical Condition

Even if your condition is severe and limits your ability to work, the SSA may still find that you can do other work and engage in SGA.

The SSA maintains a [list](#) of medical conditions that are serious enough that a person cannot engage in SGA. However, an applicant's medical issue may not neatly fit into one of these impairment categories. In that case,



the SSA has to decide if the person's condition is comparable to one of the conditions on the list.

Often, the person evaluating your request will determine your condition is not comparable and that you can engage in other types of work that can lead to SGA. If they come to this conclusion, your claim will likely be denied.

If you disagree with the SSA's determination that your medical condition is not a qualifying one, you may need to take up an appeal. You should speak with your attorney as early in the process as possible, or you may be unnecessarily prejudiced.

5. Your Employment History Is Not Long or Recent Enough to Qualify for SSDI

In addition to qualifying as disabled per SSA guidelines, an applicant must have worked long enough and recently enough to be eligible for SSDI benefits. An applicant needs a certain amount of "work credits," earned from reported yearly wages or self-employment income (on which they paid taxes). Work credits are earned for each quarter of the year a person works as long as they make a certain amount of income. The dollar amount of earnings that qualify for one work credit **varies from year to year**.

In addition, the amount of work credits a person needs to qualify for SSDI depends on the age they became disabled. The general rule of thumb is that a person needs 40 credits, and 20 of these must have been earned in the last 10 years. However, younger applicants may need fewer work credits.

If a person does not have enough work credits, their SSDI claim can be denied, even if they qualify as disabled. Applying for SSDI is a challenging task. The process can be long and arduous, with the average time for an initial decision being seven months.

SSDI Attorneys

Applying for SSDI is a challenging task. The process can be long and arduous, with the average time for an initial decision being seven months.

SEO Investing in working with an attorney can significantly improve the outcome of your case. Federal law allows applicants to access attorneys without paying attorney's fees upfront. Under this law, an attorney who helps you file for SSDI benefits can be paid up to 25 percent of the disability back pay award (**capped at \$7,200, effective November 30, 2022**) in exchange for their legal services. If your claim is not approved, you have no financial responsibility for the attorney's fees.

The Special Needs attorneys at Mandelbaum Barrett PC are available to answer any SSDI questions you may have.





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ATTORNEYS AT LAW

CHILD
Children Having Individual Learning Differences

**Basic Rights in
Special
Education Law
Webinar**

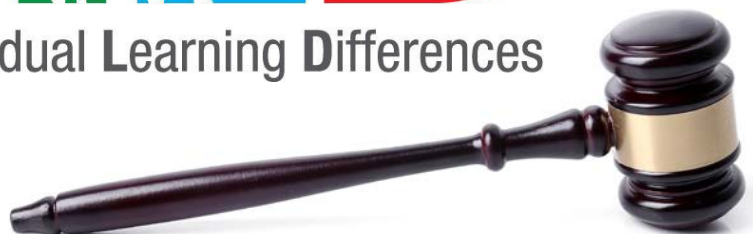
November 14th, 2023

Arla Cahill | Partner
Co-Chair, Special Needs
and Chair, Education Law

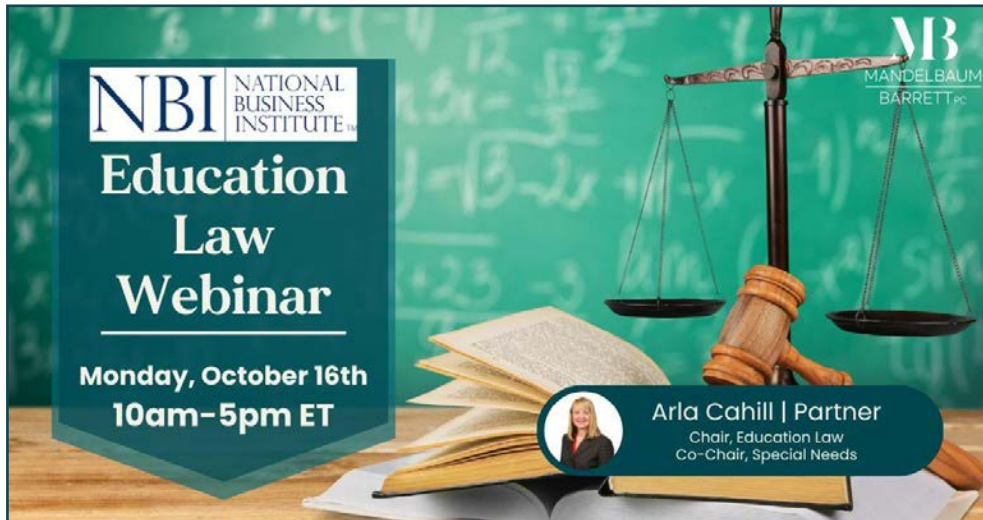
Jacqueline Yarmo | Associate
Elder Law and Special Needs

Mandelbaum Barrett PC Special Needs Co-Chair **Arla D. Cahill, Esq.** and Associate **Jacqueline Yarmo, Esq.** recently presented a live webinar for Verona **C.H.I.L.D.** titled **Basic Rights in Special Education Law.**

Special education law covers a broad continuum of students. The Individuals with **Disabilities Education Act (IDEA)** requires that every public school district identify and evaluate students suspected of having an educational disability and provide a free, appropriate public education (FAPE) to every eligible student until graduation or the year after the individual turns 21. **What rights does your child have?** This presentation will highlight the basics of the following topics: differences between IDEA and Section 504 of the Rehabilitation Act, Child Find obligations, evaluations, initial IEPs, when out-of-district placements may be appropriate, transition planning for the older student, and handling disputes with the school.



RECENT EVENTS



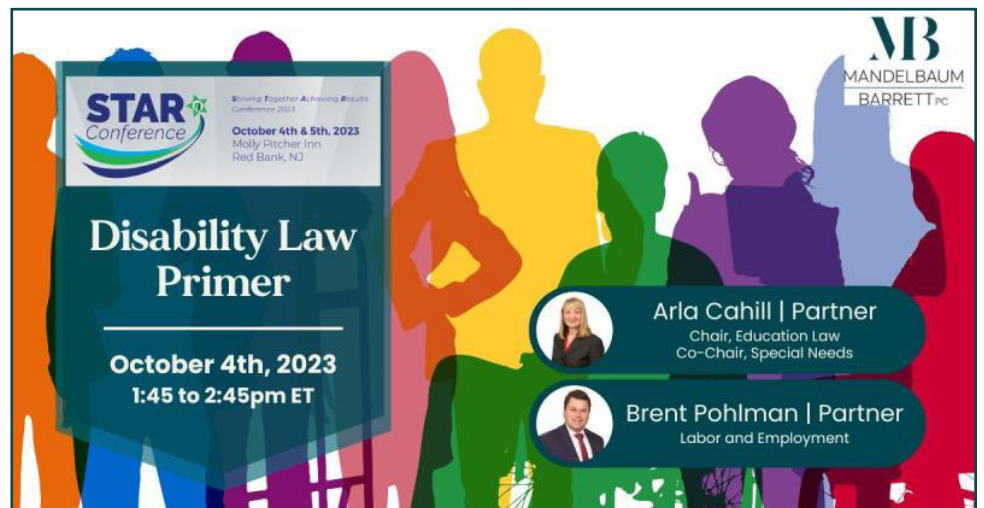
How does your knowledge of **special education** law stack up?

What are the newest legal issues concerning **technology** and the classroom?

Are you up to date on the latest **Title IX** developments?

Education Law Chair **Arla D. Cahill, Esq.** recently presented a seminar for the **National Business Institute** titled “**The ABCs of Education Law.**” This program was a Beginner’s Guide to IEPs and 504 Plans, Transgender Students’ Rights, and more. It is designed for attorneys, but school administrators, teachers, principals, counselors, superintendents, board members, school psychologists, and paralegals also benefited.

Arla Cahill, Esq., Partner and Chair of Education Law and Co-Chair of Special Needs and **Brent Pohlman, Esq.,** Partner in Labor and Employment at Mandelbaum Barrett PC recently presented a “**Disability Law Primer**” at the **ACCSES New Jersey Star Conference.**



The Disability Law Primer was an introduction to relevant state and federal laws pertinent to service providers of individuals with disabilities. Of particular focus were laws related to employment. Topics covered during the session included the **Americans with Disabilities Act (ADA)**, **Individuals with Disabilities Act (IDEA)**, **Workforce Innovation and Opportunity Act (WIOA)**, and the **New Jersey Law Against Discrimination (LAD)**. Participants received an overview of those laws impacting their work in the provision of disability services as well as the ways in which they can ensure their consumers receive the **full benefits and protections** to which they are entitled under the law.

AROUND OUR FIRM



Thanks Giving

Our firm proudly hosted its annual **Thanksgiving Food Drive** the past few weeks to benefit **Community Food Bank of NJ** and **Interfaith Food Pantry** collecting **410lbs** of food!



Elder Law Chair, **Richard Miller, Esq.** walking in the **Macy's Thanksgiving Day Parade** with the Minion's Balloon.



Thank you for placing your trust in our team.

Team Mandelbaum



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