



# The Top 5 Issues in Divorce and Special Needs Children

I recently helped a divorce attorney prepare for a case in which there is a special needs child. Divorce is not easy and is especially complex when a special needs child is involved. When the parties have a special needs child, it is critical to make sure the parents carefully consider the present and future needs of the child.

## IMPORTANT ISSUES TO FOCUS ON:

**1. Governmental Benefits.** If the child is receiving governmental assistance, it is important to involve a lawyer familiar with special needs trusts. The parent and lawyer should anticipate, to the extent possible, the current and short- to mid-term custodial and financial needs of the child so that an appropriate parenting schedule and amount of support can be set in order to avoid going to the Court, which may be costly, to make modifications or to obtain an increase in support.

Frequently, children with disabilities are recipients of government benefits such as Medicaid and SSI. These benefits are means tested. In other words, in order to be eligible, there's only a certain amount of assets that your child can have in his or her name in order to qualify for these benefits. To ensure protection of your child's benefits, it's important that the divorce attorney include language for the creation of a special needs trust. Our office frequently helps family lawyers provide the proper language and craft the special needs trust so that the child support is paid directly to the trust instead of to the child, thereby reducing the fear that benefits would be eliminated.

**2. The Daytime Needs of the Child.** Because of the type of condition of a special needs child, does a parent need to be available during the day to take care of the child? On the other hand, there have been cases where a parent has essentially tried to "exploit" a child's otherwise minimal disability in order to convince a Court that employment outside of the home was not feasible. In cases involving special

needs children, it is imperative to accurately assess the true needs of the child.

**3. Child Support.** In New Jersey, there are special considerations allowed to enter when calculating child support, including the disability of the child. Be sure to have an attorney who is able to gauge the needs of the child beyond the basic calculations and formulas that are used for child support.

**4. Life insurance.** Typically, in a divorce, the payer of child support is required to obtain life insurance to guarantee child support in case the payer dies. When there is a child with special needs, it's important to take precautions that any life insurance proceeds should not go to the child directly but instead to the special needs trust.

**5. Education.** Oftentimes, the child may receive special education services. If so, the custody order must clearly outline each parent's role in the educational decision-making process.

Unless the custody agreement grants one parent sole legal custody or revokes a parent's educational decision-making rights, it is assumed that both parents will have the right to attend IEP meetings, the right to consent to services in educational placement, and the right to request mediation and due process hearings.

There are many other considerations to contemplate in these cases. If you are faced with this situation, reach out to an experienced special-needs lawyer who can work with your divorce attorney to protect your children's rights.



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Christine L. Matus, Esq. with her family

## Recipe

# Chicken In Puff Pastry

Compliments of Chef Steph



Serves 4

1 sheet puff pastry, thawed and rolled out into a 14in square.  
4 boneless chicken breasts, cooked  
1/3 cup herbed soft cheese  
1/4 cup fresh parsley, chopped  
1 large egg  
Optional ingredients-chopped spinach, diced roasted red peppers, additional cheese, etc.

Preheat the oven to 400 degrees.  
Roll out puff pastry, cut into four equal sized pieces.  
Place 1 1/2 tablespoons of herbed cheese in the center of each piece.  
Top herbed cheese with a chicken breast and then chopped parsley  
Next, fold the corners of the pastry over the chicken breast.  
Place chicken pastry seam side down on a baking sheet covered in parchment.  
Lightly brush the top with a whisked egg.  
Bake for 20-25minutes or until crust is golden brown.

Feel free to add any of the optional ingredients as well & enjoy!