



Special Needs Trusts and Federal Student Aid

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When a special needs trust (SNT) is being set up, families are typically most concerned about government benefit programs like Medicaid and Social Security. But how might an SNT impact an individual's ability to receive federal financial aid for college? The answer is surprisingly gray.

Let's first state the obvious. When you are planning for a loved one with a disability, the SNT is usually left unfunded until your death. Until there are actually assets in the trust (meaning it has been funded) and until the beneficiary has a vested right to benefit from those assets, there are no trust assets to report. In other words, concerns regarding Federal Student Aid should never stop an individual from creating an SNT as part of an estate plan.

But what if the SNT is funded? According to the [Federal Student Aid Handbook](#), if the *settlor* (i.e., the person establishing the trust) voluntarily restricts how a beneficiary can use a trust, the present value of the trust must still be reported on the FAFSA application. A beneficiary's inability to demand distributions seems to be irrelevant. Thus, even if the trust has a "pure discretionary standard," meaning that only the trustee can distribute its funds, the present value of a trust set up for the individual's benefit will likely be countable. It does not matter whether the trust was created by the beneficiary (e.g., a first-party SNT) or by a third-party individual (e.g., a parent or grandparent).

The situation regarding a *court-ordered* trust *may* be different. The *Federal Student Aid Handbook* goes on to state that "if a trust has been restricted by court order, however, the student should not report it." The handbook then cites the example of a trust set up to pay for a car accident victim's surgery. So does this mean you do not have to report a court-ordered SNT because there was not a parent, grandparent, or guardian to establish it? Or what about an SNT created as part of a personal injury settlement or divorce? It's unclear. The Handbook fails to definitively address such situations.

What if a sibling has an SNT, but not the applicant? Generally, only trust funds "in the name of a student, spouse, or parent" need to be reported. Most funded SNTs can only be used for the benefit of the individual with special needs. Thus, in most instances, the trust would not be counted.

But since third party SNTs can have multiple beneficiaries, there may be cases where a trust benefits both a child with special needs and the child applying for college aid. Under

those circumstances, the applicant child will report the amount that he/she has a right to receive from the trust (and not the amount that only the child with special needs can receive).

What about the new ABLE (529A) accounts? The [ABLE Act states that the assets and income](#) from an ABLE account should be excluded from consideration in federal means-tested programs (with the exception of a \$100,000 asset limit for Supplemental Security Income). This would presumably mean that ABLE accounts will not be counted when applying for federal student aid, and we hope the Department of Education will agree.

While this provides some direction, these answers remain frustratingly vague. The good news is that as more individuals with special needs defy stereotypes and strive for higher education, the Department of Education will be forced to bring more clarity to these rules. And that's a good thing.

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