



November 16, 2020

via email

Committee on the Unauthorized Practice of Law
Attention: Carol Johnston, Committee Secretary
Richard J. Hughes Justice Complex
P.O. Box 970, Trenton, New Jersey, 08625-0970
Comments.Mailbox@njcourts.gov

Re: Committee On The Unauthorized Practice of Law Opinion 56 Stayed Pending Issuance Of A
Superseding Opinion; Request for Comments

Dear Committee Members:

I am writing on behalf of Advocates for Children of New Jersey (ACNJ) to strongly urge the Committee on the Unauthorized Practice of Law (Committee) to remove the language in Opinion 56 which limits the participation of non-lawyer advocates at Individual Education Program (IEP) meetings and mediation proceedings. Opinion 56, as written, is in direct conflict with the parent participation rights and procedures established for IEP meetings and mediations pursuant to the Individual with Disabilities Education Act (IDEA) and New Jersey Department of Education (NJDOE) Regulations N.J.A.C. 6A:14 et. seq. We submit, that Opinion 56's impact upon the IEP process and mediations would also be contrary to public policies promoting parent participation rights regarding their children's special education programs.

ACNJ is a statewide, nonprofit research and advocacy organization dedicated to giving voice to the needs of children by educating and engaging state leaders and educating the public through research, policy and legal analysis and strategic communications. ACNJ's Kidlaw Resource Center, operating since 1993, provides information and advocacy assistance regarding laws that impact children. Pro bono legal representation is provided to poor and low-income parents (parents whose modified net income level do not exceed 250 percent of the current federal poverty guidelines) and low bono fixed fee services for other parents who do not meet this income-eligibility criterion. We address education issues in areas such as special education, school discipline and bullying. Our mission is to help parents and their school districts resolve disputes without litigation. ACNJ attorneys have helped thousands of parents resolve disputes with their school districts informally by helping parents understand their children's education rights and through our advocacy efforts on their behalf. We also distribute education related legal guides and fact sheets and provide education law and advocacy workshops to parents and professionals who help parents and children by communicating with school staff and participating at IEP meetings alongside parents. These professionals include Court Appointed Special Advocates (CASA) volunteers, care managers and therapists working within New Jersey's behavioral health system care management organizations (CMOs), case workers and treatment providers working within the NJ Division of Child Protection and Permanency

(CP&P), staff from Family Support Organizations (FSO), social workers, psychologists and pediatric specialists.

Question #1 Whether non-lawyer advocates should be permitted to represent, and speak on behalf of, parents or children with disabilities in meetings with the school district concerning the IEP, without the presence and/or participation of the parents or children?

As written, Opinion 56 would apply to all persons with “knowledge and expertise” (see 34 CFR Section 300.321). Parents are entitled to invite such individuals to participate as IEP team members in IEP meetings and not just individuals who call themselves advocates. Contrary to the conclusions reached by the Committee in Opinion 56, IEP meetings are not legal proceedings. The function of the IEP meeting is to develop, review and revise the IEP through a process involving the “IEP team” defined as the group of individuals who are responsible for the development, review and revision of a student’s IEP. See N.J.A.C. 6A:14-2.3(k)2. Participants at IEP meetings who “speak on behalf of “parents and children are not “representing” them as that term is used in legal proceedings and so are not engaging in the practice of law. ACNJ’s education attorney routinely attends IEP meetings with parents where CASA, FSOs, CMOs and/or CP&P professionals attend to help advocate for the student. Since these professionals are very familiar with the student’s particular needs, including how trauma has impacted the student’s ability to learn in school, their contributions to the IEP development and implementation is very valuable. It is particularly beneficial to the student that these professionals can share their expertise when speaking directly and collaborating with school staff before and after IEP meetings. In addition, these professionals serve an important role for the many parents who feel overwhelmed and intimidated at IEP meetings when they are sitting in a room of school staff who are more knowledgeable about special education law than the parents.

Question # 5: Is it in the public interest to permit non-lawyer advocates to engage in those activities that are considered, in Opinion 56, to be the practice of law? If so, why?

Restricting the ability of parents to invite non-lawyer advocates to IEP meetings and mediations would greatly harm children from poor and low-income families as well as children from middle income families who cannot afford legal counsel, even at substantially reduced rates. Based upon ACNJ’s over 25 years of handling education matters, we know that there are very limited numbers of pro bono education lawyers in New Jersey. Requiring parents to either bring lawyers to IEP meetings and mediations or to speak for themselves would effectively prevent many parents from enforcing their parent participation rights to present their concerns and opinions. Many parents, regardless of income, do not have the expertise, education and/or language skills and/or do not have the ability to overcome their emotions and advocate forcefully when sitting in a room faced with a team of school staff. Through the participation of non-lawyer advocates in a non-adversarial atmosphere, the parents’ concerns can be articulated and disagreements with their school districts addressed in a way that also promote a positive relationship between parents and school staff. We know that this works because it is how ACNJ attorneys have operated for the past 25 years. We approach a case by first educating the parent about the law and discussing their child’s needs, speaking with school staff and others working with the family to understand everyone’s perspective and then working to build on common ground. Our collaborative approach has successfully resolved thousands of cases without litigation, saving both the parents and the school the cost of legal fees. Parent advocates and professionals working with families can bring some objectivity to the conversation which otherwise can be very emotional if the parents feel that the school has simply disregarded their concerns.

Children who are involved with CP&P or CMOs may have complex needs requiring the collaboration of the school staff with the professionals involved in their welfare, medical and mental health needs. These children and their parents may be supported by a variety of professionals and volunteers who have expertise beyond the scope of school staff and whose participation at IEP meetings are critical to ensure children receive an appropriate education in light of their current living arrangements which may be foster care, and/or special mental or behavioral health treatment they are receiving. In practice, a variety of professionals and volunteers who work with children and families, such as CASA, care managers and in-home therapists, CP&P caseworkers, and FSO workers accompany parents to IEP meetings to speak on behalf of their children. Opinion 56, as written, potentially classifies these professionals and volunteers as non-lawyer advocates engaged in the unauthorized practice of law. Restricting the ability of these professionals and volunteers to share their information and opinions at IEP meetings would violate the public policy interests articulated both by NJDOE and DCF to promote the equal education opportunities and success of all New Jersey's children. As a practical matter, it would not be helpful to school staff either who are trying to create an appropriate education plan for a student.

For all the foregoing reasons, the Committee's Opinion 56 should make clear that it does not apply to IEP meetings and mediations.

Respectfully submitted,



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