

Court Appointed Special Advocates of New Jersey, Inc. Change a Child's Story™



CASA
Court Appointed Special Advocates
FOR CHILDREN

NEW JERSEY

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November 16, 2020

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: Comments to Opinion 56

via hard copy and email

Dear Committee Members:

Please accept this letter in response to the Request for Comments on "Opinion 56: Non-Lawyer Special Education Consultants and the Unauthorized Practice of Law" issued on October 14, 2020 (Opinion). CASA of New Jersey, Inc. is responding on behalf of itself and its 14 New Jersey affiliates. Our primary concern is the Opinion's potential adverse effect on CASA's educational advocacy on behalf of abused and neglected children.

Pursuant to N.J.S.A. 2:4A-92 et seq. and Administrative Office of the Courts (AOC) Standards, courts routinely assign court appointed special advocates for children in out-of-home placements through the Division of Child Protection and Permanency (DCPP). (NJ Judiciary Form of Order of Appointment (attached); AOC Directive #05-13: Revised CASA Program Standards (Standards)). By the terms of the Order of Appointment, CASA volunteers and staff (CASAs) are "interested in all legal proceedings concerning the child(ren)." Significantly, CASA serves without charging a fee to the Judiciary or any party.

Pursuant to the AOC Standards, CASAs conduct independent assessments and appear at CIC hearings to provide objective, factual information to the court as well as recommendations regarding the child's best interests. Family Part judges rely upon CASAs' information and recommendations in rendering orders concerning services to be provided to the child. Thus, the Order of Appointment provides CASAs with access to all information and records relevant to the child, including but not limited to school records, without requiring the consent of the child or the child's parents (Standards). Facts and background pertaining to a child's education are an important component of CASAs' reporting.

Similarly, CASAs frequently attend meetings with school personnel and parents concerning a child's education, including IEP and Child Study Team meetings. The primary purpose and benefit of CASAs' participation is to ensure that the child's best interests are being considered, and that pertinent information CASAs can offer about the child is available to teachers, child study teams, and in-school support professionals. Parents are afforded notice of CASA information; they are regularly provided with CASAs' reports during CIC court proceedings. If they exercise their right to be present, parents simultaneously hear what CASAs have to say during any IEP meeting.

CASA supplies information gathered from, among other sources, interviews and observations of the child and parents, collateral resources such as therapists, resource (foster) parents, historical records, DCPD plans and the status of CIC proceedings. Children in DCPD custody share a history of trauma. Their special needs are often multiplied by their experience of multiple placements, school and neighborhood transitions, and physical and psychological abuse. Thus, many CASAs are trained to use trauma-informed advocacy, and are informed about “Adverse Childhood Experiences” (ACES). Their broad and specialized knowledge offers decision-makers a comprehensive picture of the child’s needs. This advocacy has never been challenged as the unauthorized practice of law.

Opinion 56, as proposed, is overly broad and may preclude these critical CASA functions, even if unintentionally. It is counterproductive and unnecessary to forbid CASAs from appearing and speaking at meetings even when parents are not present (Opinion page 8).

Response to Question 1: CASAs should be permitted to speak on behalf of children in meetings with the school district about IEPs even if parents or children are not present.

First and foremost, IEP school meetings are not judicial or legal proceedings. They often occur with no attorney present and do not give rise to any “adjudication.” Reciprocal information sharing in an IEP meeting does not constitute the practice of law whether the participant is a parent, CASA or other lay informant.

Furthermore, CASAs perform a unique role at IEP meetings with school districts. A CASA volunteer’s duty is to advocate for the child, whose interests sometimes diverge from parents’ wishes, especially if the child is under court supervision because of abuse/neglect allegations. In some cases, neither biological nor resource parents appear at the meetings. Indeed, judges often appoint CASA volunteers because of concerns about the child’s well-being, specifically in the area of their education.

Significantly, children in out-of-home placement have educational rights beyond their universal right in New Jersey to a “free and appropriate education.” The New Jersey Child Placement Bill of Rights codifies these children’s right to “receive an educational program which will maximize the child’s potential.” They are entitled to “services of a high quality that are designed to maintain and advance the child’s mental and physical well-being” (N.J.S.A. 5:6B-4(m) and (k)). CASA volunteers typically serve only one child, or a group of siblings, allowing detailed attention and reporting beneficial to the creation of individualized educational plans. This supports the legislative mandate of special attention for this vulnerable population. Impairing CASAs’ ability to speak at IEP meetings would eliminate a primary means through which the mandates of the Child Placement Bill of Rights are fulfilled.

Finally, IDEA regulations contemplate participation of people like CASAs who have knowledge or special expertise regarding the child (34 C.F.R. 300.321(a)(6)). Broad restrictions on participation would affect not only CASAs but could also impair the voices of DCPD, Children’s System of Care, Care Management Organizations and others who have unique information to offer in the CIC context. This would clearly fly in the face of IDEA regulations.

For all of the foregoing reasons, CASAs’ right to speak at IEP meetings is clear and must not be impaired.

Response to Question 2: CASAs should be permitted to speak on behalf of children in mediation proceedings concerning the IEP.

Rule 5:8C calls for CASAs to act on the court’s behalf in furtherance of the child’s interests. CASAs are explicitly permitted to request mediation of CIC proceedings and participate if ordered by the judge or at the mediator’s discretion unless otherwise prohibited by the court” (AOC Directive #15-17). Mediators are carefully trained. Protocols govern the selection of cases for mediation. Sessions are confidential. Any Consent Order that results from mediation is immediately reviewed by the court and placed on the record (AOC Directive #15-17).

Moreover, CASAs are required by law to be trained and supervised. They receive Child Abuse Record Information and Criminal History Record checks. CASAs submit to confidentiality and ethics requirements. In addition, CASA volunteers serve without compensation.

Parallel safeguards are in place in special education mediation referred to in N.J.A.C. 6A:14-2.6. Just as in CIC mediation, there is no reason to restrict CASAs' participation in special education mediation.

Response to Question 3: For all of the reasons above, no further safeguards are needed when CASAs speak on behalf of children at meetings or mediations concerning IEPs.

Questions 4-6: CASA asserts that its volunteers and staff do not engage in activities that could be considered the practice of law. Nor does the public need to be safeguarded from CASAs since they are already legally required to be properly trained and supervised.

For all of the foregoing reasons, Committee Opinion 56 should clarify that nothing in it restricts the ability of CASA volunteers to provide input on behalf of children at any meetings or mediations about the child's education, regardless of the presence or participation of the parent(s) or child.

Respectfully submitted,

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