



The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

November 16, 2020

Committee on the Unauthorized Practice of Law
Attention: Carol Johnston, Committee Secretary
Richard J. Hughes Complex
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Comments.Mailbox@njcourts.gov

To Carol Johnston and the Members of the Committee on the Unauthorized Practice of Law:

The Council of Parent Attorneys and Advocates (COPAA) respectfully submits its comments with respect to Opinion 56 (“Non-Lawyer Special Education Consultants and the Unauthorized Practice of Law). COPAA recommends that Opinion 56 be withdrawn in its entirety or substantially revised in accordance with its comments below.

COPAA is an independent, nationwide nonprofit organization of attorneys, advocates, parents and related professionals in all fifty states, including New Jersey, and in the District of Columbia and U.S. Territories. COPAA members are routinely involved in special education matters throughout the country, and they work to protect the rights of students with disabilities at all stages of the educational planning and review process.

COPAA brings to this Committee the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA frequently files briefs *amicus curiae* in the United States Supreme Court, the Courts of Appeal, and state appellate courts, including *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Fry v. Napoleon Community School.*, 137 S. Ct. 743 (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City School District*, 550 U.S. 516 (2007). COPAA has also pursued litigation to protect the rights

of students with disabilities. *See J.N. v. Or. Dep't of Educ.*, 6:19-CV-0096-AA, 2020 U.S. Dist. LEXIS 159070, at *35 (D. Or. Sept. 1, 2020) (holding COPAA had standing to challenge shortened-school days for students with disabilities); *COPAA v. DeVos*, 365 F. Supp. 3d 28, 48 (D.D.C. 2019)(granting summary judgment that the Delay Regulation, which would delay the 2016 disproportionality regulation, violated the Administrative Procedure Act).

COPAA's primary goal is to secure appropriate educational services for children with disabilities, echoing the Congressional finding in the Individuals with Disabilities Education Act (IDEA)¹ that "[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. § 1400(c)(1). Children with disabilities are among the most vulnerable in our society, and COPAA is particularly concerned with assuring the free appropriate public education that IDEA requires. In the years since IDEA's inception, COPAA's work has involved all types of advocacy, including not only addressing education policy for students, but also intervening to shed light on IDEA administrative process as is the case here.

Of 2700+ current COPAA members, 22% are parent members, 38% are advocates, 30% are attorneys and related professionals, and students are 7%. Presently, we have 111 members in New Jersey, consisting of 31 parents, 43 advocates, 29 attorneys, and 8 related professionals/students.

Advocates have been vital members of COPAA since our founding. Pat Howey,² Patricia Wright, and Sandee Winkelman³ are just a few of the nationally known advocates who have been members since

¹ IDEA was initially entitled the Education of the Handicapped Act, but, for simplicity, it is referred to as IDEA throughout.

² After more than thirty years as an advocate, Ms. Howey has since 2017 worked as a special education paralegal. <https://cmklawfirm.com/our-team/>. <https://www.wrightslaw.com/speak/howey/bio.htm>.

³ Ms. Winkelman was a plaintiff in *Winkelman*, 550 U.S. at 535, which established that parents are "entitled to prosecute IDEA claims on their own behalf" *pro se* in federal court. She is currently

its inception in 1998.

The Individualized Education Program (IEP) is “the centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311 (1988). COPAA is concerned that the rules as set out in Opinion 56, particularly as they relate to the participation of advocates in IEP meetings and mediation, would undermine IDEA’s goal and parents’ rights under IDEA in violation of federal law. As we discuss in greater depth within, while only a small number of special education matters result in litigation,⁴ every student with an IEP usually has at least one IEP meeting each year. As there are 246,677 students with IEPs in New Jersey,⁵ given IDEA’s mandate that student programs be reviewed and revisited at least once a year, 20 U.S.C. § 1414(d)(4)(A)(i), there should be at least 246,677 IEP meetings each year. However, because IEP teams must revisit the IEP if there is ever a “lack of expected progress toward the annual goals,” a “reevaluation,” additional “information about the child provided to, or by the parents,” or a change in “the child’s anticipated needs,” this number likely underestimates of the number of IEP meetings. *See* 20 U.S.C. § 1414(d)(4)(A)(ii).

As the Supreme Court has recognized, “[t]he core of the statute” is “the cooperative process that it establishes between parents and schools.” 546 U.S. at 53. And “[t]he central vehicle for this collaboration is the IEP process.” *Id.* While IEPs meetings are intended to be collaborative, parents often find it daunting to be faced with a roomful of school professionals. For any number of reasons, parents often feel overwhelmed, confused by the process, and unheard by the school district staff on the IEP team. Parents often find necessary to retain the support and guidance of advocates so that a school district will

employed as a paralegal in a law firm that specializes in special education, where her tasks include intake meetings with parents. *See* <https://cuddylawfirm.com/ourteam/sandee-winkelman/>.

⁴ In New Jersey in 2019, 1394 due process hearing complaints were filed, 1065 were withdrawn, resolved or dismissed, and only 76 were fully adjudicated.

<https://www.nj.gov/education/specialed/data/2019/DisputeResolution.html>.

⁵ https://www.nj.gov/education/specialed/data/2019/State_Classification.pdf.

take their input seriously and provide even basic IDEA services for their children. Many students, their educational programs, and their parents currently benefit from the hard work of New Jersey advocates. Because of their training and experience navigating the special education system, New Jersey advocates are able to provide tremendous technical and moral support to parents at IEP meetings. They are able to assist families in understanding the highly technical language that educators (and attorneys and advocates who deal with education law) use in navigating the educational planning process. Restricting the role that advocates play for families in IEP meetings and in mediations would be harmful to student outcomes and would also deny parents the support people that Congress intended them to have: at their discretion, the attendance of “other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate.” 20 U.S.C. § 1414(d)(1)(B)(vi).

COPAA believes that Opinion 56 should reflect the important role that special education advocates have long played in assisting parents in special education matters. Further, COPAA believes the Committee errs in characterizing the role of advocates at IEP meetings and mediation as engaging in the practice of law. Opinion 56 fails to account for the parents’ statutory rights to bring individuals of their choice to IEP meetings as well as their First Amendment rights.

COPAA agrees that New Jersey Court rules bar advocates from charging for representing parents at due process hearings, but the Committee goes beyond those rules and restricts the role of advocates at due process hearings unduly. Additionally, the Committee appears unaware that some advocates work under the supervision of attorneys, and, therefore, are authorized to practice law when assisting parents in the IEP process.

Even if the Committee ultimately determines that advocates may be engaged in the unauthorized practice of law at IEP meetings, mediation, or in assisting *pro se* parents in due process hearings, the public interest requires that advocates be permitted to engage in such activities, given that many thousands of New

Jersey children with disabilities and their parents desperately need help that is not affordable and available from lawyers. To assist the Committee in understanding COPAA's position, we provide, below, additional context regarding the work of advocates and our legal analysis of parents' statutory and constitutional rights to access advocates as well as answers to the six questions posed by the Committee.

I. Parents Have a Federal Statutory Right to Use Advocates and Others with Knowledge or Special Expertise regarding the Child at IEP Meetings

IDEA provides parents with a statutory right to bring advocates to IEP meetings, and, therefore, this Committee has no authority to regulate the use of advocates at IEP meetings. IDEA specifically provides parents with the discretion to bring "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate" to participate in an IEP Team meeting. 20 U.S.C. § 1414(d)(1)(B)(vi). The pertinent federal regulation specifies that "The determination of knowledge or special expertise of any individual . . . must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team." 34 C.F.R. §300.321(c).

Courts have construed these provisions as giving each party broad discretion to invite individuals of their choice to IEP meetings. In *Horen v. Board of Education*, 655 F. Supp. 2d 794, 804 (N.D. Ohio 2009), a federal district court held that these are "broadly worded provisions, and do not give any party, whether parents or a school board, the authority to veto the attendance by persons whom another party wants to have present." Thus, the court held that *pro se* parents could not veto the school district's decision to bring its attorney to the IEP meeting. *Id.* More recently, the New Jersey OAL held that a school district has complete discretion to bring its attorney to an IEP meeting even though the parent's attorney was not attending the IEP meeting. *CC on behalf of DC v. Hope Township*, OAL #16750-17, at 7 (N.J. OAL Jan. 8, 2018). *See also Blackman v. District of Columbia*, 72 F. Supp. 3d 249, 253 (D.D.C. 2014) (school district had violated a student's rights by removing his attorney from an IEP meeting).

As federal law specifically gives parents the right to bring "other individuals who have knowledge

or special expertise regarding the child,” to IEP meetings, this Committee lacks authority to regulate the credentials of individuals who attend these meetings at the discretion of the parents. New Jersey receives federal funds pursuant to IDEA, and, therefore, it must comply with its procedural requirements, and the local educational agencies must comply as well. *See Honig*, 484 U.S. at 310. The Supremacy Clause of the U.S. Constitution, Art. VI, cl. 2, guarantees federal rights and preempts state laws that either expressly conflict with federal law or “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress.” *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991), quoting *Hines v. Davidowitz*, 312 U.S. 52, 85 (1941). Thus, federal law controls when there is a conflict between IDEA’s safeguards and state law.

New Jersey has long recognized that “[a]n agency, must, of course, act consistently with any applicable federal law and its regulations, when a federal standard governs, must foster the federal policies.” *Baer v. Klagholz*, 339 N.J. Super. 168, 191, 771 A.2d 603, 617 (App. Div.2001), quoting *In re Adoption of Amendments to N.J. A.C. 6:28-2.10*, 305 N.J. Super. 389, 402, 702 A.2d 838, 845 (App. Div. 1997). In *Baer*, the New Jersey Superior Court, Appellate Division, held that New Jersey regulations failed to comply with IDEA and its regulations in eight areas and required new or amended regulations to comply with federal mandates. 339 N.J. Super. at 227, 771 A.2d at 641.

The Supreme Court has held that federal law preempts incompatible state laws, including those restricting the unauthorized practice of law. *See Sperry v. Florida*, 373 U.S. 379, 385 (1963) (holding Florida could not enjoin a non-lawyer registered by the Patent Office from preparing and prosecuting patent applications before the Patent Office). The Court held that “[a] State may not enforce licensing requirements . . . which impose . . . additional conditions not contemplated by Congress.” *Id.* In any event, as discussed below, even if the advocate’s work at an IEP meeting is considered the unauthorized practice of law, the public interest requires that advocates continue to be allowed to participate in IEP

meetings.

II. The Committee Should Clarify that Its Opinion Does Not Apply to the Wide Range of Individuals Who Accompany Parents to IEP Meetings and Mediation and Only Applies to Advocates who Are Acting as Legal Representatives and Not to Those Who Are Sharing Their Own Opinions and Expertise

The Opinion frequently refers to “non-lawyers who consult with parents of children with special needs,” and also refers to advocates and educational consultants without defining the terms. Given that parents are statutorily authorized to invite any individual who has “knowledge or special expertise regarding the child,” 20 U.S.C. § 1414(d)(1)(B)(vi), to accompany them to IEP meetings, COPAA is concerned that the Opinion’s broad wording will create problems when it is interpreted and applied by lay school administrators. Therefore, the Committee should be more precise and define its terms.

Parents are typically advised, “Do not go to IEP meetings alone,” and to bring a grandparent or friend if no one else is available.⁶ The Committee should specify that its Opinion does not apply when, as Congress has specifically authorized, parents invite “other individuals who have knowledge or special expertise regarding the child, including related services personnel,” 20 U.S.C. § 1414(d)(1)(B)(vi), to attend the meetings to share their own opinions about a child’s educational needs. The Opinion should not apply to licensed professionals such as doctors, psychologists, therapists, occupational therapists, speech therapists, physical therapists, social workers, and teachers who provide expert opinions, including those who have evaluated students and/or have treated them. It also should not apply to tutors, family members, or other individuals who express their own views based on their personal experience with the students.

The Opinion should also make clear that it does not apply when advocates or educational

⁶ Peter W.D. Wright, et al, *All About IEPs* 13 (2014).

consultants⁷ are invited by the parent (as allowed for under 20 U.S.C. § 1414(d)(1)(B)(vi)) and share their own opinions based on their experience and expertise. While upholding the New Jersey rule barring lay advocates from charging fees for legal representation at a due process hearing, the Third Circuit acknowledged that advocates play an important role without engaging in the practice of law. *See Arons v. New Jersey State Bd. of Educ.*, 842 F.2d 58, 63 (3d Cir. 1988). The court recognized that a broader ban on the ability of parents to have advocates involved in their educational planning process would be at odds with IDEA's purpose. It found that "[t]he New Jersey no-fee rule w[ould] not frustrate the Act's purpose of providing parents with expert assistance in navigating the administrative process." noting that, among other things, advocates could be paid for testifying as experts⁸ and advising parents about educational decisions. *Id.* Because the Third Circuit has held that advocates can testify at a hearing as expert witnesses, there is no basis for restricting those same advocates from speaking at an IEP meeting or from participating in mediation as experts.

Finally, Opinion 56 also ignores that there are individuals who are specifically tasked (by other courts or agencies) with the type of support the Opinion purports to ban. As such, Opinion 56 should make clear that it does not apply to those individuals who are appointed by a court or administrative agency to represent children, such as foster children, and whose responsibilities may include participating in IEP meetings and mediation, as such individuals are legally authorized to represent children.

III. Special Education Advocates Have Long Played an Important Role in Special Education

Special education advocacy is a long-standing practice, dating back before IDEA was enacted. As

⁷ The term educational consultant is often used to refer to individuals who counsel parents regarding educational placements for their children, including college admissions.

⁸ The Supreme Court subsequently held that expert fees cannot be obtained from school districts as costs under IDEA's attorneys' fee provision. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 294 (2006).

the Supreme Court noted in *Board of Education v. Rowley*, 458 U.S. 176, 192-93 (1982), the impetus for IDEA stemmed from two federal-court judgments that established the right of children with disabilities to education, *Pennsylvania Association. for Retarded Children v. Commonwealth*, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972), and *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972). These cases were brought by parents as well as by a leading statewide advocacy organization, Pennsylvania Association for Retarded Children. Advocates have been assisting parents at IEP meetings since the statute went into effect.

Special education advocacy is a profession comprised of a diverse group of people from a wide a variety of backgrounds. Many have lived experience as parents or family members of children with disabilities or as individuals with disabilities; some have received special education services as students. Others have professional experience as teachers, school administrators, or related service professionals. And some individuals have multiple connections to special education, as parents, students, and professionals.⁹

Some advocates and organizations that employ advocates have deep expertise in particular disabilities. For example, the National Association of the Deaf (NAD) has trained NAD Education Advocates. Each is deaf or hard of hearing, and the majority have a master's degree in deaf education and experience with deaf and hard of hearing students.¹⁰

Advocates work in many different settings. Many are self-employed private consultants who usually charge parents for their services while sometimes providing some pro bono services while others

⁹ A recent survey of advocates who were COPAA members found that 81% of respondents were parents or family members of individuals with disabilities, 2.9% had themselves been students with disabilities, 33.3% had been teachers or school administrators, and 6.3% had been related service professionals.

¹⁰ Tawny Holmes Hlibok, *Education Advocates: A New Frontier of Advocacy*, 20 Odyssey: New Directions in Deaf Educ. 12, 12 (2019).

are volunteers.¹¹ Some work under the auspices of a Parent Training and Information Center (PTIC).¹² Other advocates work under the supervision of a licensed attorney, whether a private law firm or a public interest law firm. Nationally, many public interest law firms find that using advocates is cost-effective, enabling them to serve more individuals than if they relied entirely on lawyers.

Advocates often attend IEP meetings, usually with the parents and/or students. They also frequently participate in mediation with parents, and they sometimes represent parents in due process proceedings in accordance with state law.¹³ Using their knowledge and expertise concerning special education matters, advocates work to protect the civil rights of children with disabilities, their rights to due process, and their rights to equal access to public school education. Advocates help parents obtain the information needed to make informed decisions. Advocates also assist parents in communicating with school districts. Advocates aid parents in setting challenging goals for students and in pushing IEP teams to avoid the low expectations that are too often set for students with disabilities. Advocates assist parents in obtaining expert support and documentation to persuade school districts that particular services and accommodations are necessary for a free appropriate public education (FAPE) for individual students.

Advocates are also able to contextualize education and the IEP process for families: while most

¹¹ A study of graduates of COPAA's SEAT training program found that 64% were self-employed, 6% worked at private law firms, and 4% worked at public interest law firms.

https://cdn.ymaws.com/www.copaa.org/resource/resmgr/seat/nab-final-report_final.pdf, at 14. When asked how they were paid, 20% said they were volunteers. *Id.* A recent survey of advocates who are COPAA members found that 67.2% were professional advocates in private practice, 13.2% were employed with a law firm, and 18.4% were employed by non-profits. 2.9% were employed at a Parent Information and Training Center, and 2.9% were employed with a Protection and Advocacy Agency.

¹² IDEA requires the U.S. Department of Education to fund at least one parent training and information center (PTIC) in each state specifically for the purpose of assisting parents obtain appropriate special education services for their children. 20 U.S.C. § 1471. SPAN Parent Advocacy Network is the New Jersey PTIC.

¹³ A recent survey of COPAA's advocate members found that 94.3% of respondents attended IEP meetings, 61.5% participated in mediations, and 26.6% represented parents in due process proceedings. Most of the due process complaints were resolved without a hearing.

parents want their children to get the best education, advocates help explain that school districts are required to provide a FAPE, not the best education possible. Advocates are often able to explain this concept to parents and describe how the FAPE requirement can be used to require improve services for their children. By using their knowledge of the legal requirements to improve services for students, advocates play an important role in bringing parents and school districts toward accord.

Advocates are able to review evaluations, IEPs, and progress reports and translate the medical and educational jargon into plain language for their clients. They help schedule IEP meetings and arrange for independent educational evaluations (IEEs). Because of their experience and research, they are able to share information and resources about school policies and procedures that comes in handy at all stages of the educational planning process. Before IEP meetings, they can help set reasonable expectations based on IDEA's procedures and substantive guarantees.

By explaining how the school policies and procedures work and helping parents obtain the needed evaluations and information, advocates teach parents how to analyze their positions and how to make good decisions for their children's educational program and placement. Advocates also assist parents in developing self-advocacy skills. For example, PTICs often train parents to provide peer-to-peer support for other parents; these trained parents attend IEP meetings until the less experienced parents feel comfortable that they have the self-advocacy skills to attend IEP meetings on their own. Thus, the experience of attending an IEP meeting with an advocate helps the parent "develop the skills necessary to cooperatively and effectively participate in planning and decision-making relating to early intervention, educational, and transitional services." *See* 20 U.S.C. § 1470(2).

Sadly, too often parents find that they need the support of advocates to get school districts to comply with the law and get even basic services that are mandated by IDEA. Sometimes school districts blatantly violate the legal requirements of IDEA, Section 504, and the ADA until parents obtain an advocate. For

example, it has taken the help of an advocate to persuade some school districts to provide reasonable accommodations to students with disabilities so they can participate in advanced placement (AP) or honors classes, to provide Brailled materials to students who are blind or visually impaired simultaneously with providing written materials to students who have sight, to provide captions for videos for students who are deaf or hard of hearing, to provide a full day of education for students with disabilities, and to obtain a qualified translator at an IEP meeting. During this pandemic, parents have continued to need advocates to obtain FAPE for those students who are unable to benefit from distance learning.

IV. Education and Training in Special Education and Advocacy for Advocates Is Widespread

Many individuals become advocates after extensive training as prior school district employees or as providers in related fields; some have doctorates. or other graduate degrees in education, school administration, psychology, social worker, occupational therapy, speech therapy and other fields. Many become advocates after their own experiences with IDEA services as parents, other family members, or students. While there is no mandatory training or credentialing for advocates, many voluntary training programs are available. In COPAA's experience, advocates voluntarily participate in multiple training and education programs, including continuing education programs because they recognize the benefits such programs provide.¹⁴ Many advocates seek out mentors to provide in-depth training. Additionally, COPAA has a "Voluntary Code of Conduct for Advocates" that includes a requirement that advocates continue their special education advocacy education and successfully complete twelve hours of continuing education courses annually.¹⁵

¹⁴ COPAA's recent survey of its advocate members found that, in addition to participating in COPAA's conferences and SEAT, many also participated in numerous other education and training programs.

¹⁵ The Code explains that it serves three purposes: (1) provide Advocates with a guide to professional conduct; (2) help parents make informed choices about engaging advocacy services; and (3) instill public confidence in the integrity of advocates and the roles they play. A copy is attached as Exhibit A.

Many entities throughout the nation provide training to parents, advocates, and other professionals on special education law, rights, and responsibilities. COPAA is a national leader in educating advocates. Since its founding in 1998, it has sponsored an annual conference for parents, attorneys, and advocates, with courses approved for credit as Continuing Legal Education from at least one state bar.¹⁶ COPAA offers an annual subscription to a series of Webinars on a range of topics.

COPAA has also developed a formal training program for advocates. In 2005, the University of Southern California's University Center for Excellence in Developmental Disabilities Education, Research, and Service (USC-UCEDD)¹⁷ and COPAA were awarded a three-year grant from the Office of Special Education Programs (OSEP) of the U.S. Department of Education (DOE), entitled the Special Education Advocacy Training Project (SEAT™) to develop and field-test an advanced level training program to prepare non-attorney advocates to assist, advocate for, and where allowable, represent families/students to access FAPE, as a less costly alternative to due process. SEAT is the most intensive training available for special education advocates, and it is the only training program field tested by an independent national review advisory board. There are three levels of SEAT. SEAT 1.0 is a ten-session course designed for individuals with no to little experience as an advocate. SEAT 2.0 is a year-long course designed for individuals with several years as an advocate. SEAT 3.0 is a five-week course for advanced advocates on the business of advocacy. The SEAT curriculum consists of 115 hours of classroom instruction and a minimum of forty hours of practicum/field experience.

The William and Mary Law School offers a one-week training program for lawyers and experienced

¹⁶ For example, COPAA's 2020 Annual Conference was approved for 22.5 hours of CLE credit by the Ohio Supreme Court and by the Illinois MCLE.

¹⁷ USC UCEDD is one of 67 University Centers for Excellence in Developmental Disabilities Research Education and Service (UCEDD) nationwide. The Boggs Center on Developmental Disabilities at Rutgers Robert Wood Johnson Medical School is the UCEDD in New Jersey.

advocates annually.¹⁸ The Volunteer Advocacy Project (VAP) training program offers training in three languages (English, Spanish, and Korean).¹⁹ VAP requires graduates to provide free advocacy services to four families. NAD trains education advocates with expertise in the issues faced by students who are deaf or hard of hearing. Wrightslaw offers one to two-day training programs across the nation. Advocacy training is also offered by PTICs, the National Disability Rights Network, the ARC, the University of San Diego's Dyslexia Training Institute, and many other national, state, and local organizations.

V. Advocates' Work at IEP Meetings Is Not the Practice of Law

In concluding that advocates may be engaging in the unauthorized practice of law, the Committee appears to consider the IEP a legal contract and the IEP meeting a legal proceeding for negotiation of a legal contract. In fact, an IEP is legally binding by statute and only on school districts, not parents; it is not a contract. An IEP meeting is not a legal proceeding, and, although the IEP meeting provides parents with a forum for collaborating with the school district in education planning for their children, the school district is not required to obtain consensus from the parents for the IEP and placement.

A. By Statute, An IEP Is Legally Binding on School Districts, Not Parents

IDEA establishes a substantive right to FAPE for all eligible children with disabilities. *Endrew F.*, 137 S. Ct. at 993. School districts deliver FAPE through the IEP. As the Supreme Court explained:

The IDEA requires that every IEP include “a statement of the child’s present levels of academic achievement and functional performance,” describe “how the child’s disability affects the child’s involvement and progress in the general education curriculum,” and set out “measurable annual goals, including academic and functional goals,” along with a “description of how the child’s progress toward meeting” those goals will be gauged.

§§ 1414(d)(1)(A)(i)(I)-(III). The IEP must also describe the “special education and related services . . . that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.” § 1414(d)(1)(A)(i)(IV).

¹⁸ <https://law.wm.edu/academics/programs/jd/electives/clinics/specialed/isea/index.php>.

¹⁹ See Meghan M. Burke, et al., “*Evaluating the Efficacy of a Special Education Advocacy Training Program*,” 13 J. Policy & Practice in Intellectual Disabilities 269 (2016).

Id. at 994. The Court further clarified that a FAPE also means that the child’s IEP must be “*appropriately ambitious* in light of [the child’s] circumstances,” so that “every child [will] have *the chance to meet challenging objectives.*” *Id.* at 1000 (emphasis added).

While the school district is required to provide parents with a meaningful opportunity to provide input to the IEP, at the end of the day, the school district determines the content of the IEP. If parents disagree with the IEP, they may challenge the IEP using IDEA’s procedural safeguards. *Id.* And courts have held that a *de minimus* failure to implement an IEP is not actionable because an IEP is an education plan and not a contract. *See L.J. v. Sch. Bd.*, 927 F.3d 1203, 1212 (11th Cir. 2019)(“an IEP is a plan, not a contract”). The school district’s obligations are “rooted in statute, not in contract.” *See Doe v. East Lyme Bd. of Educ.*, 790 F.3d 440, 453 (2d Cir. 2015).

B. IEP Meetings Provide Parents an Opportunity to Participate in Their Children’s Education

The Supreme Court has recognized that parental participation is central to developing a procedurally appropriate and substantively ambitious IEP:

A comprehensive plan prepared by a child’s “IEP Team” (which includes teachers, school officials, and the child’s parents), an IEP must be drafted in compliance with a detailed set of procedures. § 1414(d)(1)(B) (internal quotation marks omitted). These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances. § 1414.

137 S. Ct. at 994.

IDEA identifies the mandatory members of the IEP team: the parents of the child,²⁰ and, when appropriate, the child with a disability and at least three school staff: one regular educator of the child, one special education teacher of the child, a representative of the local educational agency (LEA) who among other things “is knowledgeable about the availability of resources of the [LEA],” and an

²⁰ COPAA discusses the relatively infrequent case when parents do not attend an IEP meeting in its response to Question 1 below.

individual who can interpret evaluation results (which can be met by a teacher or administrator). 20 U.S.C. § 1414(d)(1)(b) (i)-(v), (vii). Additional school staff may participate depending on a student's needs. The parent's side of the table is typically outnumbered by the school's side, and the school staff usually lead the IEP meeting, set the agenda, and write the meeting minutes.

1. IEP Meetings Are Not Legal Proceedings,

IEP meetings are not legal proceedings. Although IDEA provides for attorneys' fees for parents who prevail in due process and court proceedings, it specifically provides that "Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in subsection (e)." 20 U.S.C. § 1415(i)(3)(ii). Congress thus recognized that IEP meetings are not legal proceedings. The DOE has long taken the position that "the attendance of attorneys at IEP meetings should be strongly discouraged" because "an attorney's presence could have the potential for creating an adversarial atmosphere that would not necessarily be in the best interest of the child."²¹ There is substantial research demonstrating that advocates' participation in IEP meetings is useful both in promoting meaningful parental participation and in obtaining appropriate educational services and placements for children with disabilities.²²

2. Parents Often Need Assistance at IEP Meetings to Enforce their Children's Rights to FAPE and Non-Discrimination

Many parents find IEP Team meetings to be "overwhelming, daunting, challenging, and

²¹ OSEP, Letter to Andel, at 2 (Feb. 17, 2016), available at

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/15-017791-il-andel-iepteam-acc.pdf>.

²² See, e.g., Samantha E. Goldman, "Families Requesting Advocates for Children with Disabilities: The Who, What, When, Where, Why and How of Special Education Advocacy," 58 Intellectual & Developmental Disabilities 158, 165 (2020) (noting all parents who had an advocate attend a meeting with them were satisfied with the result).

confusing.”²³ The meetings are very emotional for parents, often painful because the educators focus on their children’s deficits.²⁴ The educators use unfamiliar jargon and procedures.²⁵ Even well-educated parents find meetings intimidating.²⁶

Parents know their children’s futures are at stake; good IEPs and appropriate educational placements will enable their children to make good educational progress, but inadequate IEPs and inappropriate placements will not only deny their children educational progress but may also harm their self-esteem and put them at risk of being bullied. School staff, in contrast, have other priorities, including their responsibilities to other students and financial and staffing constraints. Practically speaking, parents often need support in very difficult discussions about what they hold most precious in this world: their children, their children’s progress and abilities, and their children’s potential.²⁷

When they go alone to IEP meetings, parents often find that school personnel are not interested in their input and ignore their recommendations.²⁸ Some parents report that they have been treated badly by educators during IEP meetings; the school staff are sometimes disrespectful of the parents and sometimes blame parents for their children’s educational and behavioral problems.²⁹ Parents, particularly those who are culturally and linguistically diverse, report “feeling that they were not heard by school personnel and

²³ Tracy Gershwin Mueller & Pamela C. Buckley, “*Fathers’ Experiences with the Special Education System: The Overlooked Voice*,” 39 Research & Practice for Persons with Severe Disabilities 119, 124 (2014).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 125 (quoting one father as saying, “I got my master’s in education, and it was very intimidating to sit down in my first IEP for my son, and I know the language.”).

²⁷ *The Segregation of Students with Disabilities*, National Council on Disability, at 25 (February 7, 2018), https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf.

²⁸ Alison L. Zagona, et al. “*Parent Perspectives on Special Education Services: How Do Schools Implement Team Decisions?*” 29 #2 School Community J. 105, 106 (2019).

²⁹ John W. Reiman, et al., *Parents’ Experiences with the IEP Process: Considerations for Improving Practice*, Center for Appropriate Dispute Resolution in Special Education (CADRE) 1 (Apr. 2010),

were marginalized and isolated during the IEP meeting.”³⁰ Several studies have documented that African-American and immigrant parents have experienced “[f]rustration resulting from disrespectful and prejudicial treatment.”³¹

Having an advocate at a meeting improves the parent’s experience of the meeting. Significantly, one study found that “[m]ost of the parents reported being treated more respectfully and professionally by educators when an advocate attended the meeting.”³² The educators were also “more likely to carefully observe IEP protocol when an advocate was present.”³³ Because advocates are familiar with the process, they can help parents by obtaining evaluations and draft IEPs in advance of the meeting and help the parents prepare for the meetings. An advocate can also help the parent frame the request effectively, focusing on what the student needs rather than what the parent wants.

While the IEP meeting provides parents with a forum for expressing their opinions regarding their children’s educational program and placement, school staff ultimately make the decision about what services and supports will be provided. IEP meetings vary considerably, both among school districts and among schools in the same school district.³⁴ Some IEP teams encourage parent participation throughout the meeting while others limit parental participation to the end of the meeting.³⁵

Parents find that their children do not get FAPE because the parents lack knowledge of special education and their rights.³⁶ One parent observed, “It’s not necessarily that schools don’t want to offer

³⁰ *Id.*

³¹ Audrey A. Trainor, *Diverse Approaches to Parent Advocacy During Special Education Home-School Interactions: Identification and Use of Cultural and Social Capital*, 31 Remedial & Special Educ. 34, 36 (2010).

³² Reiman, *supra* n. 29, at 1.

³³ *Id.*

³⁴ Diane Marie Dabkowski, *Encouraging Active Parent Participation in IEP Team Meetings*, 36 #3 Teaching Exceptional Children 34, 36 (2004).

³⁵ *Id.* at 34.

³⁶ Zagona, *supra* n. 28 at 118.

those things, but sometimes they haven't been asked to offer those things, and parents haven't asked because they don't know they can."

3. Much of What Advocates Do at IEP Meetings Has Nothing to Do with the Practice of Law

Advocates help parents by educating the educators as parents often find that their educators lack knowledge about their children's specific disabilities and appropriate educational services and accommodations, including transition services as students go from pre-school to elementary school and from high school to adulthood.³⁷ Advocates can provide IEP Teams with resources when students have low incidence disabilities that are school staff are unfamiliar with. For example, an advocate working with a student who has recently undergone a hemispherectomy might ask the IEP team to provide the one-hour virtual school training session offered by the Brain Recovery Project so that teachers understand students' needs following epilepsy surgery.³⁸

When school professionals present evaluations, advocates may ask questions to clarify the reports. For example, if a student has behaviors that interfere with education, the advocate may help a parent request that the school conduct a functional behavioral analysis (FBA) and then scrutinize the evaluation to see whether it recorded data about the antecedents of the behavior, details regarding the behavior, and the consequences that resulted from the behavior. Without the support of an advocate, many parents are unaware of the intricate procedures surrounding behavior in IEPs.

Advocates are also familiar with the documentation required to persuade IEP teams of the need for particular supports, services, accommodations, and modification. For example, a parent might think that a doctor's prescription would be sufficient for the school district to agree on occupational therapy in an IEP,

³⁷ *Id.* at 118.

³⁸ <https://www.brainrecoveryproject.org/educators/school-training/>.

but the advocate would know that more is needed and guide the parent towards requesting (or obtaining) an evaluation report by an occupational therapist. The advocate would be able to facilitate the planning process from identified need to IEP team consideration.

Advocates also support parents by reviewing the school's progress reports and, insufficient data is provided, can help parents request that specific data be collected to track the students' progress towards the IEP goals. Advocates can help parents ask for information on the implementation of IEPs because they know that sometimes special education services identified on IEPs are not provided. Thus, advocates' work at IEP meetings cannot be considered the practice of law.

VI. Parents Have the Right to Consult with Advocates During Due Process Hearings

Opinion 56 goes well beyond the court rules that restrict advocates from obtaining fees for representing parents at due process hearings to also bar them from "advis[ing] or coach[ing] the parents regarding evidence, arguments, or direct and cross examinations." Opinion 56 at 6. Such a rule clearly restricts the ability of non-lawyer advocates to consult with their clients during the hearing. In *Arons*, the Third Circuit stated that the New Jersey-no fee rule "will not frustrate the Act's purposes of providing parents with expert assistance in navigating the administrative process," noting "nothing hinders [the advocate] from charging for her expert services in giving testimony, preparing technical reports, consulting with parents, attending hearings, or advising parent about educational decisions." 842 F.2d at 63. Barring advocates from providing any advice about evidence, arguments, direct and cross-examination will frustrate the Act's purpose because it will leave *pro se* parents without any "assistance in navigating the administrative process."

Studies show that *pro se* parents are at a considerable disadvantage in due process hearings because school districts are almost always represented by counsel. The school, armed with an attorney zealously representing her client, can use the law to bar the *pro se* parent from submitting crucial evidence

and otherwise presenting her case. Hearing officers cannot assist pro se litigants. As one hearing officer observed, “[t]o favor a *pro se* parent when they are not following the required procedures would indicate bias in favor of the parent.”³⁹ The hearing officer found it “regrettable” that a parent who had several potentially meritorious claims was unable to present her case in full because she was unfamiliar with the relevant laws, regulations, and policies.⁴⁰ Thus, *pro se* parents lose even obviously meritorious claims because they are unfamiliar with the hearing process. As a result, it is crucial that parents have access to the expertise and advice of advocates when they pursue due process hearings *pro se*.

VII. The First Amendment Protects the Rights of Parents to Use Advocates

The Supreme Court has long recognized that the First Amendment applies to state laws restricting the practice of law. *See NAACP v. Button*, 371 U.S. 415 (1963). The Court held that the First Amendment “protects vigorous advocacy, certainly of lawful ends against government intrusion.” *Id.* at 429. In *Button*, the Court held that Virginia’s restrictions on solicitation “violate[d] the Fourteenth Amendment by unduly inhibiting protected freedoms of expression and association” when applied to the NAACP’s efforts to end racial segregation. *Id.* at 437. Just as the NAACP used litigation to end racial segregation, special education advocates use advocacy to advance the civil rights of students with disabilities under federal and state laws and to petition the government, the school district, regarding the education of students with disabilities.⁴¹ Significantly, advocates are assisting parents in exercising their rights to petition the government to obtain educational services and supports for their children and to stop unlawful discrimination. Thus, to the extent that Opinion 56 seeks to restrict advocates from expressing their

³⁹ Lisa Lukasik, *Special Education Litigation: An Empirical Analysis of North Carolina’s First Tier*, 118 W. Va. L. Rev. 735, 775 (2016),

⁴⁰ *Id.* at 772.

⁴¹ That some advocates are paid by their clients does not negate their First Amendment rights. *See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 762 (1976) (holding First Amendment applies to commercial speech).

opinions regarding the school district's legal obligations to students, it violates the First Amendment.

VIII. Opinion 56 Is Unconstitutionally Vague

The New Jersey Supreme Court has recognized that “No satisfactory, all-inclusive definition of what constitutes the practice of law has ever been devised.” *In re Opinion No 24 of Committee on Unauthorized Practice of Law*, 128 N.J. 114, 122, 607 A.2d 962, 966 (1992). The Court stated: “The practice of law is not subject to precise definition. It is not confined to litigation but often encompasses ‘legal activities in many non-litigious fields which entail specialized knowledge and ability.’ Therefore, the line between permissible business and professional activities and the unauthorized practice of law is often blurred.” *In re Application of N.J. Soc. of Certified Pub. Accountants*, 102 N.J. 231, 236, 507 A.2d 711, 741 (1986) (citations omitted).

Opinion 56 recognizes that non-lawyers may “charge fees for accompanying parents at meetings with the child’s school to develop the child’s IEP” and for accompanying and assisting in mediation conferences. Opinion 56, at 6. It also recognizes that the non-lawyer can “assist in the negotiations between the parent and the school” at both IEP meetings and mediations. *Id.* Yet, it states that the non-lawyer cannot “represent them or speak on their behalf.” *Id.* As the parent usually attends the IEP meeting along with the non-lawyer advocate,⁴² and always attends the mediation, it is unclear what it means for the advocate to represent the parent or speak on her behalf as opposed to assist with negotiations. When Opinion 56 was in effect, some school districts took the position that advocates could not speak at IEP meetings and were relegated to consulting with parents outside the meeting or passing notes during the meeting.

⁴² In those rare instances when an advocate attends an IEP meeting without the presence of a parent, whether in person, by phone or by Zoom, the advocate is acting in a representative capacity. As COPAA states below, such representation, even if considered the practice of law, is in the public interest

Opinion 56 nowhere explains the line between assisting parents in negotiating and representing parents. Because the unauthorized practice of law is a crime, *see* N.J.S. § 2C:21-22, it is imperative that the rules regarding the unauthorized practice of law be set out unambiguously, particularly when regulating non-lawyers who do not have the benefit of a legal education. In *Arons*, 842 F.2d at 62-63, the Third Circuit drew a clear line between legal tasks that constituted the practice of law, presenting evidence and cross-examining witnesses or writing briefs, and those tasks that did not constitute the practice of law, “expert services in giving testimony, preparing technical reports, consulting with parents, attending hearings, or advising parents about educational decisions.”

While a representative at a hearing speaks for the party except when the party testifies as a witness, neither an IEP meeting nor a mediation is a formal legal proceeding that assigns a representative role to any participant and precludes a represented party from speaking. An IEP meeting is a “team meeting,” where all team members may participate in the meeting. And the advocate has no authority to bind the parent, either in an IEP meeting or mediation.

COPAA is concerned that school districts will use Opinion 56 to take upon themselves the role of policing the advocate’s role at IEP meetings. Immediately after Opinion 56 was issued, one prominent law firm that frequently represents school districts posted its interpretation on its website, stating, “case managers should be prepared to ensure that parents are active members of the IEP Team, when the parents are assisted by a non-attorney advocate, and not rely only on an advocate to present the ‘parent input’ at a time meeting.”⁴³ While often both parents and advocates speak at IEP meetings, parents sometimes choose to have the advocate take the lead, and that is their right. Some parents have their own disabilities

⁴³ Joanne L. Butler & Alison L. Kenny, “The Role of Advocates in Special Education Matters Clarified,” Schenk Price Smith & King, LLP (Oct. 6, 2020), <https://www.spsk.com/the-role-of-advocates-in-special-educationmattersclarified#:~:text=On%20September%2030%2C%202020%20the%20New%20Jersey%20Supreme,what%20activities%20constitute%20the%20unauthorized%20practice%20of%20law.>

and may find it difficult to speak publicly. Whether the parent or the advocate takes the lead in communicating at IEP meetings is within the complete discretion of the parent.

IX. Advocates Who Work Under the Supervision of An Attorney Are Not Engaged in the Unauthorized Practice of Law.

Many non-profit organizations, law firms, and attorneys hire advocates to work with them on special education matters, either as employees or independent contractors.⁴⁴ Attorneys may use advocates to interview clients and witnesses, attend IEP meetings and mediations, and obtain and review educational records, among other things.

Yet, this common practice, which has a long history, appears to be barred by Opinion 56's broad language, which states that the "lawyer must be retained separately by the parents." Opinion 56, at 6. When the advocate works with an attorney, the advocate's role is similar to a paralegal, and there is no question that a lawyer may employ a paralegal or contract with an independent paralegal. Thus, when an advocate works under an attorney's supervision, the advocate is not engaged in the unauthorized practice of law.

The New Jersey Supreme Court held that independent paralegals who are subject to direct supervision of lawyers are not engaging in the unauthorized practice of law. *In re Opinion No 24 Committee on Unauthorized Practice of Law*, 128 N.J. 114, 123, 607 A.2d 962 (1992). The same rule applies to advocates, who are also non-lawyers, when they work under the supervision of an attorney. Whether the lawyer uses the term paralegal, advocate or client advocate is irrelevant. *See, e.g., Sanchez v. State*, 641 So.2d 433-34 (Fla. Dist. Ct. App. 1994) (holding attorney-client privilege applied to

⁴⁴ A survey of the first participants in COPAA's SEAT program found that approximately 10% were working with public interest or private law firms. H, at page 14 https://cdn.ymaws.com/www.copaa.org/resource/resmgr/seat/nab-final-report_final.pdf. A recent survey of COPAA advocates found that 13.2% were employed by law firm and that 18.4% were employed by non-profits, which may include some public interest law firms.

correspondence with a P&A's client advocate).⁴⁵ Thus, if the attorney employs or contracts with the advocate, the attorney may charge the client for the work of the advocate as well as the attorney, and the rules on fee-sharing do not apply.

COPAA is aware that many attorneys provide free consultations to advocates to assist them effectuate the civil rights of students with disabilities. Such assistance should be encouraged rather than discouraged. For one example, an advocate contacted an attorney after a parent had been told that her kindergarten child, who had a peanut allergy, was not allowed to attend an International Night because some food might be cooked with peanut oil. The lawyer e-mailed the advocate a due process hearing decision that had held that that excluding students with nut allergies was unlawful discrimination in violation of Section 504. The advocate provided the decision to the school district, and the school district agreed to exclude nuts rather than the student.

X. Specific Responses to the Committee's Questions

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 individualized education program (IEP), without the presence and/or participation of the parents or children?

A. Advocates' Role When Parents Attend IEP Meetings

The question presumes that an IEP is a formal proceeding in which parties are represented, but, as discussed above, an IEP is not a formal legal proceeding, and advocates are not engaged in the practice of law when they attend IEP meetings. Further, parents have the statutory right under federal law to bring advocates to IEP meetings. It is up to parents to determine whether the advocate or the parent should take the lead in discussions at the IEP meeting, and the participation of advocates at IEP meetings is in the public interest. COPAA incorporates herein its responses set out in Sections I-V, VI-IX, and X(5).

⁴⁵ P&As are publicly funded to provide protection and advocacy to individuals with disabilities. Disability Rights New Jersey is New Jersey's P&A.

B. Advocates Should Be Able to Attend IEP Meetings without Parents When Necessary

While advocates usually attend IEP meetings with parents, parents should have the right to delegate an advocate to attend IEP meetings on their behalf, and to communicate with school staff regarding a student, if the parent provides a written release. Although the statute does not address whether an IEP meeting can proceed without a parent, the pertinent federal regulation provides that an IEP meeting “may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.” 34 C.F.R. § 300.322(d). There are many reasons why parents are unable to participate in IEP meetings. School districts typically require that IEPs be held during the school hours even though such times may be impossible for working parents who do not have flexible schedules. Other parents may have caregiving responsibilities or their own health problems that prevent them from attending. For many poor parents, transportation costs are a barrier to in-person IEP meetings, and access to computers and internet and lack of experience and training are barriers to Zoom IEP meetings. While sometimes an IEP meeting can be rescheduled to allow a parent to attend, there may be times when a student’s needs are urgent, and a delayed meeting would be harmful to the student.

School districts do hold IEP meetings without parents. One study found that 87.1% of parents attended the most recent IEP meeting for students aged 15-19, and 90% of parents attended the most recent IEP meeting for students aged 11-14.⁴⁶ Thus, 10% or more of the meetings took place without parental participation. New Jersey has about 246,677 students with IEPs, so as many as 24,677 IEP meetings may take place each year without any parental participation. It is obviously far better for a student and a parent to be represented by an advocate than for an IEP meeting to proceed with school staff alone and no one to represent the child.

⁴⁶ Mary Wagner, et al, A National Picture of Parent and Youth Participation in IEP and Transition Planning Meetings, 23(#3) J. Disability Policy Studies 1, 7 (2012).

The federal agency entrusted with enforcing IDEA has advised that an advocate may participate in an IEP meeting without the presence of the parent. OSEP stated that it found nothing in IDEA “that would require that a parent be present at the IEP meeting in order to have a person that the parent determines has special knowledge or expertise regarding the child at the meeting as a member of the IEP team.”⁴⁷ The public interest is served by allowing advocates to participate in IEP meetings without parents when the parent is unavailable to participate and authorizes an advocate to attend.

2. Whether non-lawyer advocates should be permitted to represent, and speak on behalf of, parents or children with disabilities in mediation proceedings concerning the IEP?

Mediation is not the practice of law, and, therefore, non-lawyer advocates who assist parents at mediation are not engaged in the unauthorized practice of law. IDEA provides for mediation to resolve disputes between parents and school districts. 20 U.S.C. § 1415(e). Mediation is voluntary and “is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.” § 1415(e)(2)(A) (i) & (iii). If the matter is resolved with a written agreement, the agreement is a legally binding agreement enforceable in state and federal court after being signed by both the parent and a representative of the school district with authority to bind the district. 20 U.S.C. § 1415(e)(2)(F). There is no requirement that the mediator be an attorney. The New Jersey Department of Education (NJDOE)’s Summary of Mediation and Due Process Requirements specifically provides: “The purpose of mediation is to discuss the issues and explore the options in an attempt to resolve the underlying dispute. The chief school administrator of the district or his or her designee attends the mediation. The district may bring its

⁴⁷ Letter to Serwecki, 44 IDELR 8 (2005), <https://www2.ed.gov/policy/speced/guid/idea/letters/2005-1/serwecki022805iep1q2005.pdf>.

attorney. The parent(s) may bring an attorney and/or advocate to the mediation.”⁴⁸ Thus, the relevant state agency specifically authorizes advocates to accompany parents to mediation.

Opinion 56 asserts that “representing a party in formal mediation is the practice of law and may be done only by a lawyer” but provides no legal authority to support that proposition. Opinion 56, at 9. In fact, New Jersey law is to the contrary. In Opinion 28, Out-of-State Attorney Representing Party Before Panel of the American Arbitration Association in New Jersey, 3 N.J.L. 2459, 138 N.J.L.J. 1558 (1994), this Committee specifically found that “an out-of-state attorney’s representation of a party in an arbitration proceeding conducted under the auspices of the AAA in New Jersey does not constitute the unauthorized practice of law.” The Committee noted that the New Jersey Supreme Court’s Advisory Committee on Professional Ethics (ACPE) has held that “non-lawyers may provide ADR/CDR services as long as they do not hold themselves out as lawyers and do not engage in any activities such as the rendering of legal advice, that might constitute the unauthorized practice of law.” *Id.*, n.1, quoting Opinion 676, 3 N.J.L. 650, 136 N.J.L.J. 1298 (1994).

Mediation is a vital procedural safeguard for parents, and it is important that parents be able to have the assistance of advocates during mediation, as provided by the NJDOE. In New Jersey, in 2019, there were 859 requests for mediation, and 678 mediations were held, with 121 agreements reached in due process cases and 136 in cases not related to due process complaints.⁴⁹ NJDOE does not identify whether parents were *pro se*, represented by counsel, or assisted by an advocate, but if the representation at due process hearings is a guide, the majority are probably *pro se*, with some assisted by an advocate.

There is usually a stark power imbalance at mediations, with lay parents, who may not even have a high school diploma much less a college degree, facing school representatives, who must include a

⁴⁸ <https://www.nj.gov/education/specialed/duel/summary.pdf>, at p.2.

⁴⁹ <https://www.nj.gov/education/specialed/data/2019/DisputeResolution.html>.

representative of the school district with authority to bind the district, who usually has a graduate degree and years of training in education and school administration, and may include the district's counsel.

Opinion 56 would prohibit advocates from charging fees for assisting parents with mediation, making it impossible for many parents to obtain help for mediation. While some non-profits may be able to provide advocates to assist parents with mediation without charging the clients, they cannot meet the demand for assistance, and advocates cannot be expected to provide valuable assistance without charge. There is no basis for curtailing the rights provided by NJDOE to the assistance of an advocate in mediation either by restricting the advocate's work or by barring the advocate from charging for her work. In any event, it is in the public interest for parents to have the assistance of advocates in mediation.

3. What safeguards should be required when non-lawyer advocates represent, and speak on behalf of, parents or children with disabilities in meetings concerning the IEP or in mediation proceedings?

COPAA first notes that federal law provides parents have the complete discretion to bring whomever they determine has "knowledge or special expertise regarding the child," 20 U.S.C. § 1414(d)(1)(B)(vi), and the NJDOE authorizes parents to bring advocates to assist them with mediation. Further, it is the parent and not the advocate who has authority to make decisions regarding the IEP and to sign the mediation agreement. If the parent is disappointed in the outcome of an IEP meeting or mediation, IDEA provides procedural safeguards, *see* 20 U.S.C. § 1415, and a parent can request a new IEP meeting or an amendment to an existing IEP at any time. *See* 20 U.S.C. § 1414(d)(3)(F) &(4).

COPPA believes it is important for parents to have information on how to select an advocate. COPAA posts information about how to select an advocate on its website; a copy is attached as Exhibit B. The Massachusetts Department of Elementary and Secondary Education worked the Federation of Children with Special Needs, the Massachusetts PTIC, to create a brochure for parents on how to select an advocate. (A copy is attached as Exhibit C). These guides encourage parents to ask about the advocate's

training and education, among other things. It may be useful for the New Jersey Department of Education to work with the New Jersey PITC to provide a similar brochure for New Jersey parents.

COPAA has considered the possibility of certification of special education advocates but is concerned that it might not be feasible. In 2008, the Final Report to the National Advisory Board of the Special Education Advocate Training Project discussed both the benefits of a certification program as well as the possible disadvantages of certification. First, there was a concern that certification would broaden the gap between those who can afford to pay for lawyers and other professionals and those who cannot. Second, there was a concern about the time and cost of creating a certification program and for individuals to obtain certification. Third, there was a concern that certification would restrain competition in the relevant market. Fourth, there was concern about potential legal liability in the areas of antitrust, negligence (liability to third parties), due process, defamation, and ADA compliance. Fifth, significant resources would be needed for allowing for investigation into complaints and oversight. Sixth, given state law differences, it was unclear whether a national model would work.⁵⁰

4. What criteria must the non-lawyer advocate meet to be permitted to engage in activities that are considered, in Opinion 56, to be the practice of law?

As discussed above, COPAA does not believe that an advocate is engaged in the practice of law when attending IEP meetings or mediation, and federal law provides parents with complete discretion to bring the individuals of their choice to IEP meetings. Federal law preempts the Committee from setting out criteria that the non-lawyer must meet to participate in an IEP meeting. Similarly, NJDOE permits parents to bring advocates with them to mediations, and it does not set any requirements for their participation.

⁵⁰ Final Report to the National Advisory Board of the Special Advocacy Training Project, at 17-18, https://cdn.ymaws.com/www.copaa.org/resource/resmgr/seat/nab-final-report_final.pdf. A Copy is attached as Exhibit D.

COPAA is also concerned that formal training requirements would exclude experienced advocates who have demonstrated ability to assist families and would create entry barriers that would preclude culturally and linguistically diverse individuals from serving as advocates when they are so badly needed. Parents may have a number of priorities in selecting an advocate, such as expertise in their children's disabilities or, for non-English speakers, the ability to speak their language.

Advocates who represent parents at due process proceedings are required to disclose their knowledge and training in their applications to the OAL. It is not within the purview of the Committee to set requirements for those representing parents in due process as that is OAL's responsibility. Because advocates are not permitted to charge parents for their work in representing them at due process, COPAA is concerned about mandating training requirements for them.

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

Even if the Committee determines that non-lawyers engage in the practice of law when attend IEP meetings and/or mediation, COPAA strongly believes that it is in the public interest to allow them to engage in these activities. The dearth of attorneys available to assist families with children with disabilities is well established, particularly for families unable to pay for attorneys and experts.⁵¹ As the Supreme Court has recognized, this shortage has led some parents to resort to representing themselves *pro se* in federal court as well as in administrative proceedings. *See, e.g., Winkelman*, 550 U.S. at 535 (holding parents could proceed *pro se* on their independent IDEA claims).

⁵¹ Elisa Hyman, *et al.*, *How IDEA Fails Families without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 Am. U. J. Gender Soc. Pol'y & L 107, 111 (2011). A Pennsylvania study found that, over a five-year period, parents were represented by attorneys from nonprofit or legal aid groups in fewer than twenty-five of the 383 cases (6.5%), less than five a year. Kevin Hoagland-Hanson, *Comment: Getting Their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania*, 163 U. Penn. L. Rev. 1806, 1822 (2015).

Most families with children receiving special education services cannot afford lawyers. One-quarter of students with IEPs have families with incomes below the poverty line, and two-thirds have family incomes of \$50,000 or less.⁵² Many parents, desperate to help their children, mortgage their homes and raid their retirement funds, to hire lawyers and pay expert fees. Others do not have those options.

Recent studies confirm that without counsel, parents do not have the experience or ability to “navigat[e] the intricacies of disability definitions, evaluations processes, the developments of IEPs, the complex procedural safeguards, among other provisions in the statute,” and, as a result, parents of students who were represented by counsel were far more likely to be successful in their IDEA claims than those without counsel.⁵³ Unlike parents who are frequently unrepresented and often cannot afford expert witnesses,⁵⁴ schools are represented by counsel⁵⁵ with expertise in special education law, and schools can draw on the expertise of school staff (without incurring additional expense) as well as paid experts.⁵⁶

Many parents understandably feel ill-equipped to represent themselves and their children in IEP meetings, mediation, and due process proceedings. Denying them the ability to use advocates will adversely affect children; they will be without the enormous assistance special advocates can provide. Without the participation of advocates at IEP meetings and mediation, children will be deprived of

⁵² Hyman, *supra* n. 51, at 112-13. See also Kelly D. Thomason, Note, *The Costs of a "Free" Education*, 57 Duke L.J. 457, 483-84 (2007).

⁵³ Lukasik, *supra* n. 39, 118 W. Va. L. Rev. at 775 (over twelve years, North Carolina *pro se* parents prevailed on at least one issue in just 11.1% of the cases, while those with counsel were five times more likely to prevail on at least one issue (51.3%)); William H. Blackwell & Vivian V. Blackwell, “*A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*,” Sage Open (Jan.-Mar. 2015)(over an eight-year period in Massachusetts, parents with attorneys were much more likely to win than *pro se* parents); Hoagland-Hanson, *supra*, 163 U. Penn. L. Rev. 1807, 1820 (2015) (over a five-year period, Pennsylvania parents who had legal counsel prevailed 58.75% of the time whereas *pro se* parents prevailed only 16.28% of the time).

⁵⁴ See *Arlington*, 548 U.S. at 304 (holding IDEA does not include expert fees as costs).

⁵⁵ The Massachusetts study found that schools were represented in 100% of cases where parents were only represented in 40.3% of the cases. Blackwell, *supra* n. 53, at 7.

⁵⁶ Debra Chopp, *School Districts & Families Under the IDEA: Collaborative in Theory, Adversarial in Fact*, 32 J. Nat’l Ass’n Admin. L. Jud. 423, 453 (2012).

appropriate educational services and their parents will be deprived of a meaningful opportunity to participate in educational planning for their children. Because the resources of non-profits are inadequate to meet the need, it is important that parents be able to hire professional advocates as well as access volunteer and non-profit advocates.

6. How can the public be protected from non-lawyer advocates who do not have adequate knowledge or training with respect to children with disabilities and their educational needs?

Questions 3 and 4 address protections for parents and children with disabilities who retain non-lawyer advocates, and COPAA incorporates its response to Questions 3 and 4 here. There is no need for any concern about protecting school districts, the other party in these matters, as they are represented by school district administrators, school staff, and school district attorneys, who are well situated to protect the interests of school districts in IEP meetings, mediation, and due process. Further, as IEP meetings, mediation, and due process are confidential matters regarding the individual needs of students, the Committee's focus should be limited to protecting parents and students.

Conclusion

COPAA respectfully requests that the Committee withdraw Opinion 56, or revise it substantially, as discussed above. In the event that the Committee holds a hearing regarding this matter, COPAA respectfully requests to be heard.

Respectfully submitted, this 16th day of November 2020.

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Voluntary Code of Ethics For Special Education Advocates

Introduction

This Voluntary Code of Ethics was composed by a group of active Special Education Advocates, all of whom are members of The Council of Parent Advocates and Attorneys (COPAA), a national voice for special education rights and advocacy. COPAA's primary goal is to secure effective and appropriate educational services for children with disabilities, and to protect their educational and civil rights.

COPAA'S membership is comprised of special education attorneys and advocates, and parents whose children receive special education services. The purpose of this Code is to provide a set of principles which Special Education Advocate members of COPAA (Advocates) can use as a guide for their work, conduct, and decision making. This Code is voluntary and is intended only as a guide. Each Advocate who chooses to use this Voluntary Code should apply and interpret these guidelines within the bounds of state law in his or her state.

Preamble

Special education advocates are committed professionals who help parents secure free appropriate public education for their children with disabilities. Advocates promote dignity and respect for every individual with disabilities by promoting vigorous enforcement of state and federal civil and human rights laws.

Special Education Advocacy is a profession comprised of a diverse group of people who work as independent private consultants or under supervision of a licensed attorney or in a law firm; in a public interest law center or other nonprofit organization; or under the auspices of a parent training and information center or advocacy center. Advocates may work in a paid or voluntary capacity. An Advocate has knowledge and expertise concerning special education and its applicable federal and state laws and works within the bounds of these laws. An Advocate protects the civil rights of children with special needs, their rights to due process, and their rights to equal access to equitable public school education. An Advocate remains current with applicable regulations and special education issues through continuing education and training.

This Voluntary Code is intended to accomplish the following:

- a. Serve as an Advocate's guide to professional conduct.
- b. Help parents make informed choices about engaging advocacy services.
- c. Instill public confidence in the integrity of Advocates and the roles they fill.

Advocates who voluntarily subscribe to this Code are expected to follow the Code's ethical principles as a guide for proper professional conduct. This Code does not create disciplinary rules, and is not intended to be used to sanction Advocates.

Ethical Principles

I – Competence

An Advocate:

1. Works within the limits of his or her competence.
2. Informs a client when the Advocate is not competent to handle a matter or any portion of a client matter.
3. Is candid concerning the Advocate's knowledge and skills.
4. Continues his or her special education advocacy education by successfully completing 12 hours of continuing education courses annually. Continuing education courses may be obtained through private or non-profit vendors, bar association continuing legal education courses, paralegal courses, State Department of Education courses or seminars, civil rights or disability rights organizations; professional associations of attorneys or advocates; or other continuing education courses or programs related to special education practice, advocacy, negotiation, or mediation.
5. Is knowledgeable with regard to the regulations of the jurisdictions in which they work or in which their clients are located.
6. Provides competent assistance. Competent assistance requires the special education knowledge, skill, thoroughness, and preparation reasonably necessary for the assistance required under the circumstances.
7. Exercises reasonable care.

II – Responsibilities to Client

An Advocate:

1. Helps clients make informed decisions about appropriate educational services by providing clients with relevant information.
2. Helps clients articulate their concerns and desires for student's educational needs.
3. Makes full disclosure to every individual involved with a matter that he or she is not licensed to practice law and cannot give legal advice.
4. Handles matters in a timely manner and without undue delay.
5. Educates clients about special education law and regulations, and helps them become more skillful and effective advocates.
6. Maintains regular contact.
7. Treats clients and others with dignity and respect.
8. Secures a written agreement for services with clients before performing any professional services.

9. Obtains a client's permission before discussing the client's matter with anyone other than the client, and adheres to any Federal or applicable State confidentiality requirements.*
10. Maintains client records, keeps client information confidential and, unless the client has agreed in writing otherwise, makes arrangements to return or destroy records belonging to the client at the conclusion of the client's matter.
11. Discloses that an advocate-client privilege may not exist, and that the Advocate must comply with any court or hearing officer or administrative law judge orders, and may be required to comply with lawfully-issued subpoenas.
12. Maintains and shares information regarding local, state, regional, and national resources for parents and students, and information regarding current trends and practices in special education, as well as a referral list of professional contacts.
13. Provides culturally and educationally appropriate services.

III – Conflicts of Interest

An Advocate will:

1. Disclose all potential conflicts of interest. An Advocate is obligated to place the interest of the client ahead of any personal interest or personal gain, and to disclose all facts in any situation where a potential conflict of interest may arise.
 - a. An Advocate will at a minimum, inform potential clients of any employment affiliations, financial or professional interests that may be perceived to bias recommendations, and in some cases, decline to provide services where the actual or apparent conflict of interest is such that it may fairly be concluded that such affiliation or interest is likely to impair professional judgments, result in personal gain, or impede advocacy efforts in any way.
2. Make referrals and placements to service providers based solely on the needs of the student.
3. Refrain from accepting or giving anything of value for the recommendation of advocate services to others

IV – Communication

An Advocate will:

1. Never knowingly mislead others in the pursuit of a client's matter.
2. Pursue ethical means to solve an issue or produce a particular outcome.
3. Present claims that are truthful and can be substantiated concerning the Advocate or the Advocate's service or the services of another advocate.
4. Communicate with others in a fair and civil manner.
5. Maintain as confidential all information about the client which is provided to the Advocate by the client, will use such information solely for advocating on behalf of the client, and will not disclose such information to any third party except (a) with prior authorization from the client; or (b) as otherwise required by law.
6. Maintain and preserve client records in a manner that complies with applicable state law or rules of professional conduct governing client records for the Advocate's state in which his or her office is located.

V – Professionalism

An Advocate will:

1. Adhere to all applicable laws of the jurisdiction(s) in which the Advocate works or in which the client is located.
2. Review relevant records and information prior to effectively offering specific assistance.
3. Attempt to resolve special education disputes utilizing IEP meetings, mediation and resolution meetings, as described in the I.D.E.A. and the Advocate's state special education regulations.
4. Manage his or her professional office and financial affairs in a manner that conforms to generally accepted business and financial practices.
5. Treat all parties subject to a dispute with candor, fairness and civility.

** Please note: As a general rule, and unless given an explicit state statutory right to assert privilege, advocates are not able to assert privilege for communication with clients. Please check with an attorney in your state for any questions regarding assertions of privilege.*



Guide to Choosing an Advocate

Many parents choose to use a special education advocate to support them in getting what their children need in special education. Nonlawyer advocates do not have a license to practice law, and they are not attorneys. They provide their services according to the laws of their state. Advocates are often professionals with training in special education and advocacy. They may or may not charge fees for their services. (COPAA uses the terms "special education advocate" and "advocate" to refer to individuals who advocate for parents and families, but are not attorneys.)

You can find advocates by using the advocate locator on the website of the Council of Parent Attorneys and Advocates, Inc. (COPAA). You can also call your state's [Parent Training and Information Center](#) or inquire with local disabilities organizations. You can ask other parents and professionals in your area about advocates they have used or recommend.

GUIDELINES

Select a trained, experienced advocate.

Unlike attorneys, no certification authority exists to certify advocates at this time. However, many special education advocates have years of experience and training. When you interview an advocate, you should ask about their education and training. You should also ask whether the advocate stays current in the field by getting updated training and education through workshops, conferences, and continuing education programs. Do not hesitate to ask for references from the advocate. You are the one making the hiring decision.

Select an advocate with special education experience.

Experienced advocates can often help you obtain the educational services your child needs. Advocates may have specific skills and knowledge about evaluations, various disabilities, IEPs and other educational negotiations, behavioral supports and discipline, document management, fact investigations, and other areas. They may have alternative dispute resolution skills, such as mediation and facilitation skills. Advocates should be familiar with the local service providers, evaluators, local school districts and the options they offer, and local customs. They should know and understand IDEA and other laws/regulations affecting the education of students with disabilities. Ask your advocate about his or her experience and specific skills. You need to be an informed consumer and ask the questions that are important to you.

Select an advocate who understands your child.

You should expect an advocate to spend time visiting with your child. Each child is a unique human being and has individual educational needs. Your advocate should be able to explain to you how your child's disability will affect him or her at school. Advocates are not diagnosticians and they are not education evaluators. But, a working knowledge of your child's disability, or a willingness to become educated about your child's disability, is a quality a good advocate should have.

Advocates and attorneys.

Nonlawyer advocates are not attorneys or members of the bar. Some advocates and paralegals are supervised by attorneys. Some work in forms or with public interest organizations. Others work independently in their own offices. You can ask an advocate if they work with an attorney. But, it is not necessary that a lawyer oversee an advocate, or that an advocate even have a relationship with an attorney. Many experienced advocates work completely on their own or with other advocates who are not licensed attorneys. You should decide what you want in an advocate and what kind of assistance you need.

Select an advocate who understands his or her professional limits.

Professional advocates may give you legal information and help you negotiate and resolve disputes. But, they are not lawyers, and cannot give you the same type of legal advice as attorneys or act as your lawyer. An experienced, well-trained advocate should help you recognize when you should seek an attorney's services. Should your next step be a due process hearing, you should check your state laws regarding assistance from an advocate. In some states, nonlawyer advocates can represent parents in administrative due process hearings. In others, they cannot, and may only assist the parents. An advocate cannot represent you in state or federal court. If you are contemplating due process, you and your advocate should discuss your case. You should think about whether you need to hire an attorney based on your individual situation and needs and the laws of your state. Ultimately, it is your responsibility to make this decision and you should make the decision you believe is most appropriate.

Other questions you might ask.

Here are some questions you might ask as you decide whether to hire an advocate.

- What is the advocate's special education advocacy experience? Does he/she have experience in situations similar to yours? Has he/she worked with this school district or similar ones?
- How does the advocate believe your situation should be handled? What is the estimated time frame for completing the work? What will the advocate do?
- How will you be expected to assist and work with the advocate?
- How will you and the advocate keep each other informed about the case?
- What does the advocate charge and how will you be billed? How are fees determined? Will you be billed on a hourly or flat basis? What is the total estimated fee?

- Who keeps the copies of your child's records at the advocate's place of business, and how your child's files will be maintained and returned to you when you need them?

Parents play a vital role in every special education matter. Advocates can give you advice and opinions based upon their training and experience, but you--the parent--must make all of the final decisions about your child. After meeting with the advocate ask yourself if you:

- Will be comfortable working closely with this person
- Are confident the advocate has the experience and skill to handle your case
- Understand the advocate's explanation of what your case involves
- Understand the proposed fee agreement

The Council of Parent Attorneys and Advocates, Inc. offer these suggestions as a public service to parents of children with disabilities. They are not intended as legal advice or a legal opinion. The COPAA Guidelines incorporate some information based in part on information published by the Illinois Attorney General's office.

WHAT IS A SPECIAL EDUCATION ADVOCATE?



An advocate is someone who helps a parent or family to understand the special education process.

Advocates can provide information about special education options and requirements, and can help you to seek a specific service or program for your child.

An advocate can help you carefully read your child's school records, testing information, and Individualized Education Program (IEP). If you wish, an advocate may attend Team meetings with you.

A skillful advocate who knows local schools and resources can often see solutions not immediately obvious to other people.

An advocate, most importantly, can help you to become a better advocate for your own child.

For more information or to locate an advocate in your area, please contact the Federation for Children with Special Needs, and ask for an Information Specialist.

Federation for Children with Special Needs
The Schrafft Center
529 Main Street, Suite 1102
Boston, MA 02129
(617) 236-7210 (Voice and TTY)
(800) 331-0688 (Toll free in MA)
(617) 241-0330 (Fax)
info@fcsn.org (Information)
www.fcsn.org

Visit us on the web



*Developed cooperatively by the
Federation for Children with Special Needs
and the
Massachusetts Department of
Elementary and Secondary Education*



FEDERATION FOR CHILDREN
WITH SPECIAL NEEDS



*A Parent's Guide to
Selecting a Special
Education Advocate
in Massachusetts*

*Finding the right advocate for your family means asking the right questions.
Try to interview at least three advocates before hiring one.*

A GOOD ADVOCATE...

IS WELL-TRAINED AND KNOWS THE LAW

- Ask what kind of training the advocate has received. When? From what organization(s)? How much experience does he/she have?
- Consider asking the advocate specific questions about special education laws and regulations. Does the advocate give clear explanations?

UNDERSTANDS SCHOOLS

- Discuss what the advocate knows about teaching methods. Ask the advocate to explain how to measure your child's progress in school, and to show how this information can be helpful in developing the IEP.
- Find out how the advocate plans to obtain positive results for your child, while maintaining a productive working relationship with your child's school.

TAKES TIME TO KNOW YOUR CHILD

- If possible, arrange for the advocate to meet and spend time with your child. Your child's education must be individualized to meet his unique needs; an advocate should get to know your child as an individual.
- Make sure the advocate understands the facts of your child's situation. If you would like the advocate to see your child's school records, the school will require you to sign a release form.



EMPOWERS YOU

- Find out how the advocate will try to educate and empower you to become a better advocate for your child.
- Find out when the advocate is available, and how much time he or she will be able to spend with you. Is the advocate willing to attend meetings at your child's school?

UNDERSTANDS DISABILITIES

- Find out what the advocate knows about your child's specific disability.
- Ask if the advocate has experience with other children who have the same type of disability, and consider if that is important to you in obtaining an advocate.

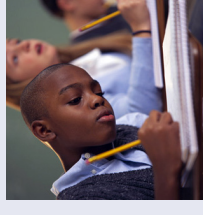
ACTS PROFESSIONALLY

- Ask the advocate to explain how he or she was able to work out a solution with and for other families in the past.
- Consider asking for references from the advocate's previous clients.
- Consider drawing up a written agreement of what the advocate will do for you.
- If the advocate charges a fee, make sure you know what the advocate's fee and/or the retainer amount will be. Agree to these specifics up front and in writing.
- Decide when or if the advocate can speak to the school without your permission.
- Ask that the advocate return all materials when you are finished working together.

It's important to know that there is no formal certification or licensing process for advocates. Most advocates are not trained as lawyers. A well-trained advocate will help you know when you need advice from a lawyer.

ADVOCATING FOR YOUR CHILD

Effective advocacy starts with educating yourself. Make sure you understand your child's disability and learning style. Become knowledgeable about your child's school program, and learn about your rights and responsibilities under the law. As a key member of your child's Team, your goal is to work collaboratively with teachers and other professionals.



Begin to inform yourself by looking at the Federation for Children with Special Needs website at www.fcsn.org, or contact us at 1-800-331-0688 to find out about our workshops and trainings. Other great resources are the National Dissemination Center for Children and Youth with Disabilities at www.nichcy.org, or disability-specific organizations such as the National Center for Learning Disabilities, www.nclld.org, the National Down Syndrome Congress, www.ndsccenter.org, or the Autism Society of America, www.autism-society.org.

If you are concerned about your child's progress in school, talk with your child's teacher, principal, or IEP Team leader. It is also helpful to speak with other parents, especially the members of your town's special education Parent Advisory Council (PAC). At the Federation for Children with Special Needs, information specialists can also answer your questions. If you have a specific question about laws or regulations, or if you believe the school is doing something they should not do, you can call the Program Quality Assurance office of the Massachusetts Department of Education (1-781-338-3700).

You can also hire a special education advocate to assist you. Successful advocates get good results for students by working cooperatively and openly with parents and schools. The Federation for Children with Special Needs provides training for special education advocates called the Parent Consultant Training Institute. The Federation maintains contact information for all persons who have successfully completed their training.

Final Report to the National Advisory Board
Special Education Advocate Training Project
USC UCEDD and COPAA
December 16, 2008



The SEAT Project will be ending December 31, 2008, after a 4th no-cost extension year. The purpose of the SEAT Project was to develop and field-test a uniform training program for professional Special Education Advocates. Four goals were proposed in the original grant:

GOAL I	To develop and field-test a uniform training program for professional Special Education Advocates
GOAL II.	To explore the feasibility of replicating the SEAT model throughout the U.S.
GOAL III:	Evaluate the effectiveness of the SEAT curriculum and training program.
GOAL IV:	To disseminate findings of the project

Below is a summary of accomplishments, issues raised by this project, and future directions for the field of special education advocacy.

GOAL I	TO DEVELOP AND FIELD-TEST A UNIFORM TRAINING PROGRAM FOR SPECIAL EDUCATION ADVOCATES.
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1. DEFINING SPECIAL EDUCATION ADVOCACY AS A “PROFESSIONAL PRACTICE.”

Distinguishing Special Education Advocacy from other related practice groups. Because “special education advocacy” is an unregulated practice, one of the first tasks of the project was to define the group of advocates the SEAT Program was intending to prepare. The project recognized that there was overlap in the training, competency and practice of special education advocates with three related practice groups: (1) generic consumer advocates; (2) paralegals and (3) special education attorneys. See Figure 1.

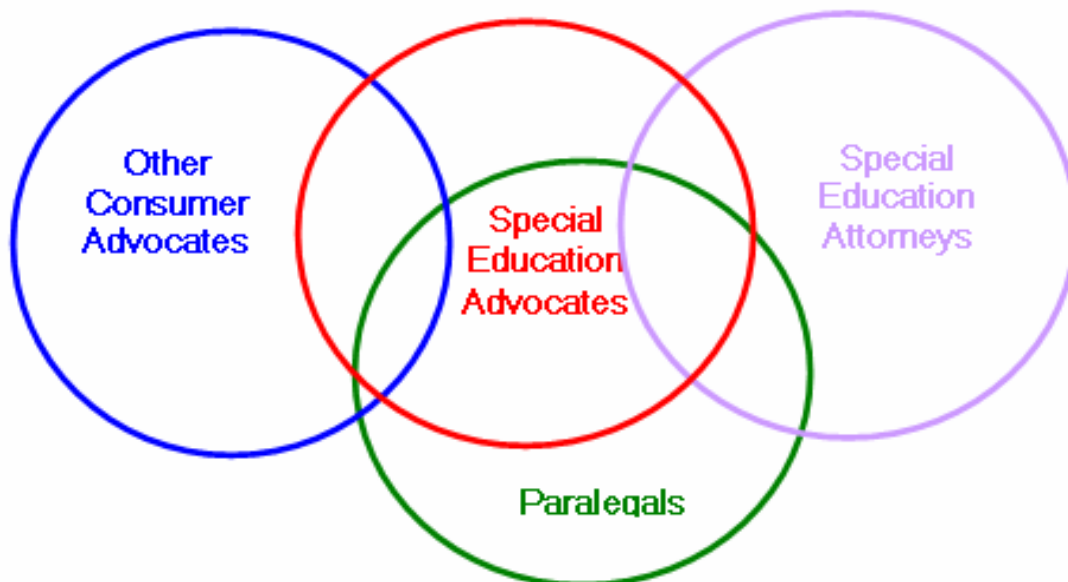


Figure 1. Overlap of Special Ed. Advocates with three other practice groups.

The SEAT Project utilizes the following definition as the targeted audience for the SEAT Training Program:

Special Educational Advocates are a distinguishable group of professionals who assist parents or guardians in securing a Free and Appropriate Public Education for their children. Advocates may do so in an unpaid or paid capacity. Advocates may work in private practice or under the auspices of a legal firm, public interest law center, or parent training information and advocacy center. There is currently no formal authority to define or regulate the practice of special education advocacy.

Special Education Advocate Training Project, 2008

Distinguishing SEAT graduates from other “special education advocates” and other “special education training mechanisms.” There are many entities throughout the nation which provide training to parents and professionals on special education law, rights, and responsibilities, including but not limited to law schools, the National Disability Rights Network (formerly Protection and Advocacy); Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs), Public Interest Law Centers, and some Family Resource Centers. Much of existing training centers on understanding how to advocate for ones own child. However, there is not a uniformly agreed upon format to provide specialized training in how to advocate as a professional on behalf of a student with disabilities who is part of a client’s family. The SEAT Program is designed to be an advanced level, 230 hr training program which builds on previous knowledge to prepares non-attorney advocates to assist, advocate for, and when appropriate represent families/students to access FAPE, within the guidelines set by states for non-attorney advocates. This advanced level of training distinguishes the support provided by non-attorney advocates assisting parents to access FAPE. See Figure 2.



Figure 2. **SEAT—Level III Advanced Special Education Advocacy Training**

Defining Competencies of Special Education Advocates. Early in the project, it became clear that a set of measurable competencies which underlie and define the practice of special education advocates was needed in order to develop a uniform teaching curriculum. A review of literature from comparable fields, i.e., paralegals, special education attorneys (to define the line between non-attorney special education advocate practice and the unauthorized practice of law), and through a rigorous process of soliciting expert opinion and verification by stakeholder groups, 47 competencies were identified as core to special education practice. *See Attachment 1 for a copy of the SEAT Core Competencies.*

Defining SEAT Voluntary Special Education Advocate Professional Ethics and Standards of Practice. During the field-testing of the curriculum, it became evident that the field could benefit from a Voluntary Code of Professional Ethics and Standards of Practice to guide Special Education Advocacy practice. Again building on ethics defined by other related fields and soliciting expert opinion from the field of special education advocacy, the SEAT Project created a core set of voluntary principles of ethical and professional conduct for Special Education Advocates. Like all professional fields, these principles are embedded in the SEAT curriculum, and underlies the teaching and acquisition of SEAT Core Competencies. These principles fall under five domains: (1) Professional competence, (2) Client and Family Relations, (3) Transparent, forthright, truthful communication, (4) Developing and cultivating multiple relationships which benefit the client and disclosing conflicts of interest, and (5) Ethical Business Practices. *See Attachment 2 for a copy of the SEAT Voluntary Code of Ethics and Standards of Practice.*

The SEAT Project acknowledges that because Special Education Advocacy is currently an unregulated field, compliance with this code of ethics is *voluntary*. Statutes, regulations, and case history/precedence within each jurisdiction must be taken into consideration when interpreting and applying the SEAT code of ethics.

2. DEVELOPING THE SEAT CURRICULUM—230 HRS OF COURSEWORK AND PRACTICUM

Curriculum development proved to be a herculean task. The first necessity, given that the field of special education advocacy was heretofore undefined, was to come to consensus regarding the level of material and the slant of the training. The project was at times caught on a seesaw between the importance of legal understanding (content) and advocacy techniques (process), and was challenged to include a combination of both approaches while attempting to ensure that current best practice and challenges in the field were interwoven as well.

Over the course of the three year project the curriculum writing process was informed through a rigorous process involving site instructors, national advisory board input, feedback from outside expert reviewers, and feedback from the 200+ participants in the pilot sites. .

The 230 hour SEAT Curriculum has two components: **115 hrs of classroom instruction and 115 hrs of practicum/field experience** under the supervision of an experienced special education attorney and/or special education advocate.

Classroom Instruction. Representing the best thoughts and practices in the field, the SEAT training program provides systematic training to students on a variety of topics in the following six (6) areas:

1. Introduction to Special Education Advocacy and Practicing Advocacy with Ethics and Integrity
2. Legal Foundation of Rights to Special Education
3. The Structure of FAPE under the IDEA
4. Basic Skills of a Special Education Advocate
5. Conflict Resolution in Special Education
6. The Business of Advocacy

The coursework is divided into **thirty-eight (38) 3-hr modules**, across the 6 broad domains listed above. The SEAT curriculum consists of:

- (1) a **SEAT Reader**, which is a compilation of information Special Education Advocates must know in order to meet the core competencies identified for this program. The SEAT reader is used as a “textbook” for students and instructor, in addition to other recommended books, web materials, and handouts.
- (2) an **Instructor’s Guide** which contains an outline of the learning objectives for each of the 76 3-hr modules, reading assignments, classroom activities, homework assignments,
- (3) **Powerpoint presentations** for each chapter, and
- (4) **Exams** for each chapter to document student mastery of content and skills taught.

The recommended SEAT Instructional Team consisted of 3 members: (1) an experienced special education advocate, (2) an experienced special education attorney, and (3) an experienced parent to parent support professional. Typically, the special education attorney or the special education advocate was the lead for the site.

Issues for Consideration:

1. Despite clear articulation of the preferred model of instruction, pilot sites were uneven in assuring delivery according to the guidelines that specify a team teaching approach. Not every site taught in this manner and many pilot sites did not locate a parent to be part of the Instructional Team. Many of the site instructors were parents of children with IEPs, but they were also advocates or attorneys. The concept, and therefore desirability of hiring a parent who is a specialist in parent to parent support to help teach SEAT appeared to be unfamiliar concept. Consideration should be given to stronger requirement that sites identify the instructional team prior to being approved as a site.
2. The Project utilized the expertise of special education attorneys, long-time special education advocates (some of whom went to law school but did not take the bar) in developing much of the SEAT curriculum. There was always a slight tension between what a special education attorney felt an advocate should know and do vs. how special education advocates defined requisite knowledge base and skills for advocates. This is

- most likely reflective of a larger un-resolved tension within the field of special education advocacy that was outside the scope of SEAT curriculum to resolve.
3. In the initial pilot sites there was initially great resistance to “testing” SEAT trainees using formal written, closed book tests. This becomes a critical discussion as we attempt to define futures uses for the curriculum. Testing is one of the few concrete ways the instructor is able to determine competence and most certainly is an important component of laying the groundwork towards the possible concept of “certifying” and “monitoring” practicing special education advocates.
 4. In the process of responding to a variety of feedback and input we acknowledge that the final version of the curriculum likely serves as a standardized model, offering more suggestions and guidelines than instructors of the project sites can possibly use. This provides the teacher with a range of options within each of the components of the model curriculum. Several assumptions and beliefs about curriculum development are inherent in this approach. Experienced teachers who are able to inspire trainees to explore a discipline have a genuine interest or passion in the discipline themselves. These teachers have gathered stories, regalia, and documents to make the curriculum authentic, and they employ strategies to effectively engage learners in the process of inquiry, based upon the unique needs of the learners in each course session. We strived to generate learning that consists of investigative activities and the development of creative products in which students assume roles as firsthand explorers, writers, and practicing professionals.
 5. The curriculum as a standardized model is appropriate, however, the original expectation of uniform delivery is likely unrealistic.
 - a. Even with the presence and oversight of project management during the pilot phase individual sites included or excluded information at will based upon such factors as time, perception of students needs, or instructor familiarity or level of comfort with subject matter or technique. Without a clearly identified oversight body there is no way to regulate or determine the uniformity of application.
 - b. Special education advocacy occurs under a variety of conditions, settings, oversight, state and local regulations, etc. Aspects of an advocates responsibilities or expected knowledge that may relevant in one state or setting may be irrelevant in others.

Practicum Experience. In designing the curriculum there was agreement from all interested stakeholders to include a practicum in the requirements. The purpose of so doing is to broaden the scope of the experience beyond classroom teaching.

The required practicum is a structured experience with a knowledgeable special education attorney or experienced advocate, and is designed to provide the SEAT student with supervised opportunities to apply and/or practice what they learned in the classroom with an actual client -- for example, opportunities to interact directly with clients, assist in preparing cases, participate in IEP meetings, mediations, resolution sessions, and other aspects of advocacy services as time and case timelines allowed. No compensation was provided to participating Practicum Supervisors who precepted SEAT trainees.

The 115 hours of practicum was typically met over a three to four-month period, averaging 7-10 hours per week. Actual days and times for the practicum varied and were arranged with the

assigned practicum supervisor. When possible trainees were not placed in a practicum site where they were currently employed. At the end of the practicum experience, the practicum supervisors were asked to verify the hours worked and evaluate the student on the following SEAT Core Competencies:

- Knows how to find information
- Grasp between federal and state law and when to use one or the other
- Analytical skills
- Student knows when to hand to attorney – UPL
- Negotiating skills
- Awareness of ethical issues
- Communication skills Oral
- Communication skills Written
- Identifies issues
- Addresses parent concerns
- Professionalism

Issues for Consideration:

1. Matching trainees to practicum sites is a labor intensive process. In some communities, there were limited numbers of qualified practicum supervisors. These included both communities that are under-represented; where the SEAT training was most needed, as well as communities that have ample numbers of practicing special education advocates and attorneys. Requiring existing capacity to build capacity seems self-defeating. Alternative models should likely be considered.
2. Practicum supervisors had uneven expectations of trainees, some expecting that SEAT trainees would be adequately prepared to work in their practice without intensive supervision. There was not standardized expectation or structure regarding responsibilities, expected levels supervision, or graduated levels of independent task completion/common understanding of what constituted excessive requirements for supervision. The process of gathering quality and complete practicum evaluations for individual trainees was tedious and at times difficult. Relying on completion of practicum experience is likely a poor quality indicator of competence due to the wide variety of experiences during practicum, variance in supervision, etc. In addition we were unable to study the extent to which the practicum experiences were complementary to the classroom portion of the training.
3. There were multiple approaches to provision of practicum experiences across sites. The majority of programs placed students in practicum after completion of the coursework. One site in Cohort 3 exposed trainees to practical aspects of practicum experience correspondent with the coursework, for example when learning how to brief a case and conduct research trainees would work on an actual case within the law center involving that skill. To be uniform the project should define appropriate models of delivery and minimum demonstrated skills and experiences.
4. Many trainees in private practice were unwilling or unable to devote the necessary hours away from paying clients to complete the practicum in an environment outside of their current employment.

5. Some practicum supervisors asked whether labor law would require that SEAT trainees be paid for services provided within a practice, parallel to pay provided to law interns.
6. Questions regarding insurance coverage for trainees arose; including the extent to which, if any, coverage they had while working in practicum placements.

3. FIELD-TESTING THE SEAT TRAINING PROGRAM

Table 1. Number of SEAT students participating in the field-test, by cohort and geographic location.	
Cohort/ Site	Total # of students admitted
Cohort 1	
Bay Area	16
LA	23
NYC	19
Philadelphia	19
Total	77
Cohort 2	
LA	24
NYC	20
Total	44
Cohort 3	
LA	17
Boston	15
Total	32
GRAND TOTAL	153

The SEAT Curriculum was revised and field-tested 3 times. See Table 1 for a summary of the location of sites for each cohort and the # of students enrolled and who completed the SEAT program.

Cohort 1: The first field-test included four sites selected to evaluate the impact of state law on teaching SEAT. These sites were: Bay Area, CA; Los Angeles, CA; New York, NY; and Philadelphia, PA. Each site's instructional team consisted of a Special Education Advocate, Special Education Attorney, and a Parent (where possible). All of the site instructors were COPAA members who were actively involved in writing the original curriculum. Each site received ~\$11,000 to cover the costs associated with Instructor time and operating the training program. Students were charged a fee to participate (\$200) to assure a commitment. But since this was a demonstration project, \$175 of the original \$200 fee was returned if

the student finished the program and complied with the evaluation¹.

Cohort 2: The Instructional Teams in the Bay Area and Philadelphia did not wish to participate in the second field-testing of the SEAT curriculum--ostensibly due to the labor intensiveness of the training program. Instructional Teams for Los Angeles and New York City continued with a second cohort of students. As can be seen in Table 2, an additional 44 students were admitted to the SEAT program across both sites. Each site was given \$13,000 to cover the costs of operating the training program. Students were charged a fee of \$300 to participate, with an agreement for \$200 return of fees for compliance with the evaluation of the project².

As can be seen in Table 1, the SEAT curriculum was field-tested on a total of 153 students (77 students in Cohort 1 across four sites; 44 students in Cohort 2 across two sites; and 32 students across two sites in Cohort 3.

¹ A decision was made to return fees to all students regardless of the outcome of their participation.

² A decision was made to return fees to all students regardless of the outcome of their participation

Cohort 3. A no-cost extension was requested to allow the project to field-test the curriculum a third time, in an effort to evaluate the feasibility of implementing the SEAT program through fees charged to students and to examine how SEAT could be implemented by two different venues: (a) a Public Interest Law Center (Learning Rights Law Center in LA), and (b) a Parent Training and Information Center (Federation for Children and Families in Boston). Both entities had excellent track record in special education advocacy and working with parents. Each site was given \$6,000 and were allowed to charge tuition to students and keep this fee to cover their costs. Fees were not given to students in Cohort 3

GOAL II. To explore the feasibility of replicating the SEAT model throughout the U.S.

Over the course of the three pilot years we learned much about the potential models available to provide training.

Cohorts were taught in a) Public Interest Law Centers (PILCOP and Learning Rights); b) national civil rights law and policy center (DREDF); c) Parent Information and Training Center (The Federation for Children with Special Needs) d) in the facilities of and under supervision of the UCEDD at CHLA, and e) through private practice.

Criteria for effective sites to implement SEAT appear to have less to do with the type of organization hosting the training than with the attributes or characteristics of the host site.

We recommend that host sites demonstrate evidence of the following requirements to successfully complete delivery of the entire SEAT curriculum:

1. Must have demonstrated experience in special education law and/or advocacy practice.
2. Must be an agency with sufficient infrastructure to deliver the curriculum in a controlled fashion.
3. Documented experience teaching a long-term “course.” “Long-term” is defined as: the teaching of multiple topics over a pre-set period of time—as you would take a course in college. The SEAT curriculum is designed in 3-hr modules, sequenced in a certain order, and requires regular scheduled teaching over a 3-5 month period, depending on how the modules are scheduled for teaching. The following are possible models to teach the course in a reasonable time frame:
 - 2-3 ½ hr classes a week
 - 1 Saturday a week
 - one weekend every 3 weeks
4. Access to qualified instructors who have documented experience in special education law and/or advocacy practice. Specifically, at least 3-5 years as a licensed attorney or experienced advocate. The model uses a team teaching approach with a special education advocate as the lead for the course, a special ed attorney as co-instructor for some topics, and a parent professional for some topics. Not all instructors must be present for every class, but team teaching is encouraged as it allows students to hear about a topic from different perspectives.
5. Access to an appropriate learning environment conducive to teaching 12-20 students. For example,

- a. classroom for +/-20 people
 - b. access to powerpoint/chalkboard/whiteboard/poster paper
 - c. tables or desks for students
 - d. access to a computer lab or a set of computers for research assignment purposes—preferred, not required
 - e. access to restrooms, restaurants, or a kitchen
 - f. access to a copy machine and equipment to reproduce materials for the classes.
6. Capacity to recruit, select, and notify students of acceptance into the program using project criteria.
 7. Documented experience with and sufficient administrative support to meet grant/contract requirements, e.g., data collection, uniform implementation of the curriculum as written, provision of feedback to the project related to evaluation of the curriculum and its components on a regular basis, report writing (minimal).
 8. Ability to either provide opportunities internally for supervised practicum's or identify and recruit experienced special education attorneys and/or advocates to provide practicum experience to students. Match students to practicum supervisors and provide oversight until the practicum is completed. Facilitate the collection of practicum evaluation data.

Another critical issue affecting feasibility of replication is the **cost** of delivering the program. **Absent grant funding** the host site will need to charge an amount to each participant to cover the cost of the training. **Estimates range from \$800-1,200.00.** While this amount certainly is prohibitive for some, it is not unusually high for a 230 hour experience.

There remains concern that without ongoing grant funding or support to reduce costs that under-represented communities will remain unable to access training. Special Education Advocacy is a skilled profession that requires both initial and ongoing training and information.

GOAL III: Evaluate the effectiveness of the SEAT curriculum and training program.

SHORT-TERM OUTCOMES OF SEAT TRAINING:

Table 2. SEAT Completion Rate -- Cohorts 1, 2, 3				
Cohort/ Site	Total # of Students Admitted	Total # Completed Course	Total # (%) SEAT Certificates	Total # (%) dropped, refused practicum, didn't finish practicum, didn't pass practicum, lost to follow-up
Cohort 1				
Bay Area	18	13	12	6
		72%	67%	33%
LA	23	18	16	7
		78%	70%	30%
NYC	19	18	15	4
		95%	79%	21%
Philadelphia	18	18	9	9
		100%	50%	50%
Sub-Total	77	68	52	25
		88%	68%	32%
Cohort 2				
LA	24	17	14	10
		71%	58%	42%
NYC	20	16	12	8
		80%	60%	40%
Sub-Total	44	38	26	18
		86%	59%	41%
Cohort 3				
LA	17	15	?	?
Boston	15	15	?	?
Sub-Total	32	30		
GRAND TOTAL	153	136	64%	36%

As can be seen in Table 2, **64 %** of students admitted to the SEAT program in Cohorts 1 and 2, successfully completed the SEAT coursework and their practicum, leading to receipt of the SEAT Certificate of Completion. **36%** did not complete the program because they either dropped early in their coursework, did not start and/or complete their practicum; or were lost to

follow-up. **These data suggest that future work must examine better entry level criteria for this advanced level training.**

CHARACTERISTICS OF SEAT TRAINEES:

Screening Criteria: The SEAT Project developed the following screening criteria for admission into the pilot:



- **Three (3)** felony convictions (cannot be placed in a law practice for their practicum)



- **No** Law Students; **Three (3) students** admitted to the bar but not currently practicing.

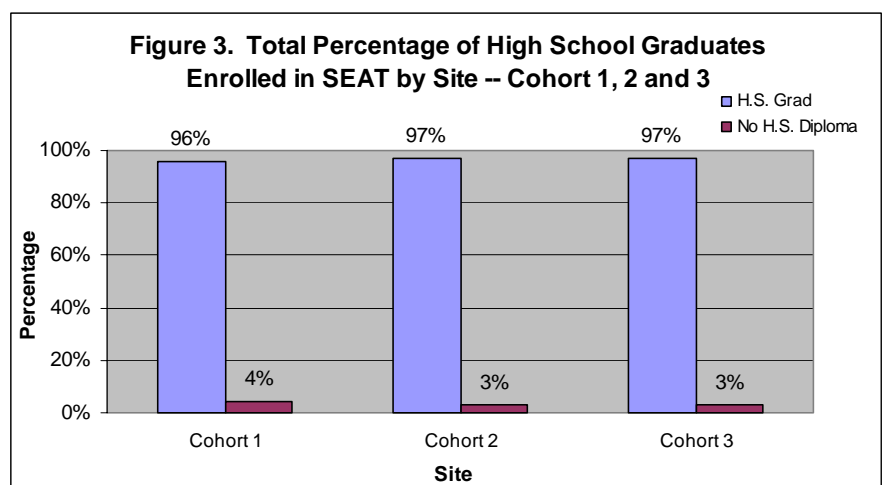


- **Two(2)** LEA/SEA employees; **One (1)** School Board member (who was also a parent)—this student was never placed in a practicum.



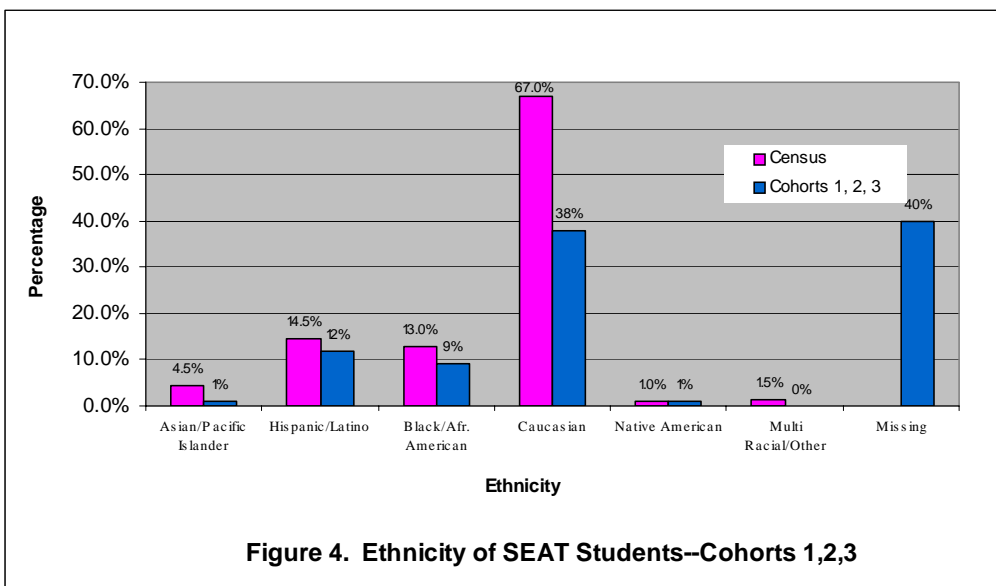
Educational Level:

Most SEAT Trainees were HS Graduates. 96% of SEAT students across all 3 cohorts reported they were High School Graduates. Five students (4%) reported they did not have a HS diploma. See Figure 3



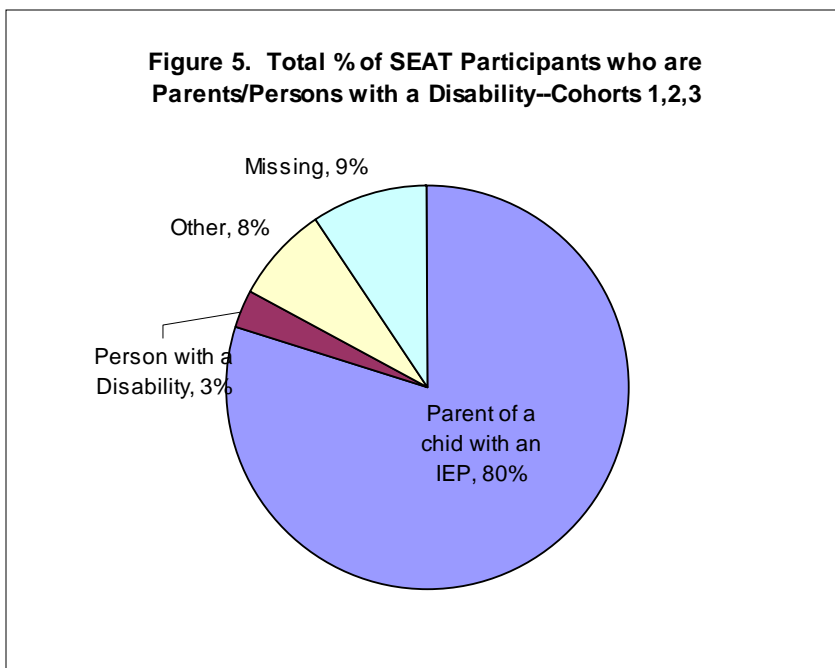
Ethnicity of SEAT Trainees:

As can be seen in Figure 4, across all 3 cohorts of students, Latino and African American trainees were somewhat representative of the US census. Asians and Caucasians were under-represented. It should be noted that 40% of SEAT trainees did not provide ethnicity data.



Majority of SEAT Trainees were Parents

As can be seen in Figure 5, the overwhelming majority of SEAT trainees were parents of children with IEPs (80%). Three percent (3%) identified as individuals with a disability; 9 % did not report this information.



ONE-YEAR FOLLOW-UP OF SEAT TRAINEES:

Characteristics of the Follow-Up Sample:

A follow-up survey was sent to all trainees in Cohorts 1 and 2 approximately one-year after they completed their practicum. The survey asked questions related to whether they were practicing special education advocacy, how much time, whether paid or unpaid, where they were working, and what their salary and benefits were. We have complete data on 50 respondents. Table 3 shows the distribution of survey responses by site. As can be seen more than half of the SEAT trainees from the Bay Area and LA completed the follow-up survey. Approximately one-third (1/3) of participants in NY and Philadelphia completed the survey.

Site	# of Survey Responses	% of Site Participants Completing the Survey
Bay Area (n=16)	9	56%
Los Angeles (n=37) (Cohorts 1 & 2)	21	57%
NYC (n=37) (Cohorts 1 & 2)	13	35%
Philadelphia (n=19)	7	37%
Grand Total	50	

Length of time Respondents had been Special Ed. Advocates before joining SEAT:

As can be seen in Figure 6, our follow-up sample is biased towards more experienced Special Education Advocates. Seventy percent (70%) of SEAT graduates who responded to the follow-up survey reported they were special ed. advocates before beginning SEAT. Of these, almost half had been special ed. advocates for more than 3 years. Another 27% had been advocates for 1-3 years, and about 1/5 of respondents were relatively new to advocacy.

Figure 6. Percentage of Respondents who were Special Education Advocates Before Beginning SEAT – Cohorts 1 & 2

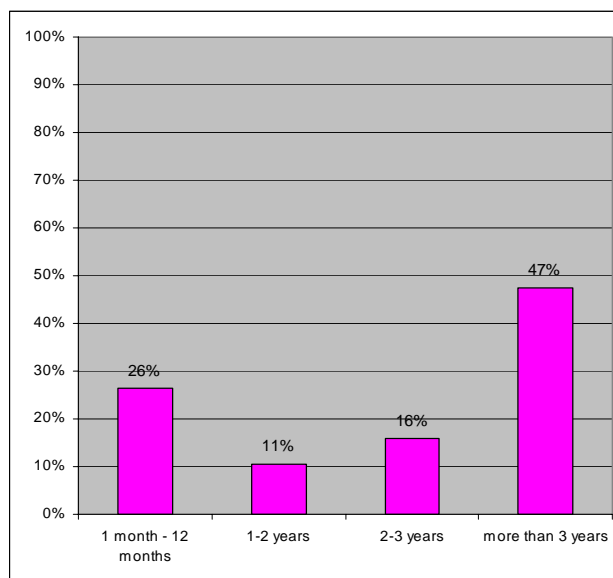
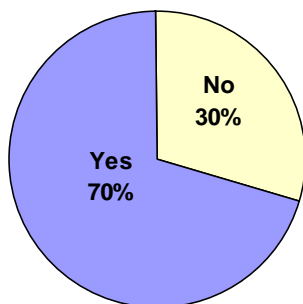


Figure 7. # of Years practicing as an Advocate before SEAT.

WHAT ARE SEAT GRADUATES DOING WITH THEIR TRAINING?

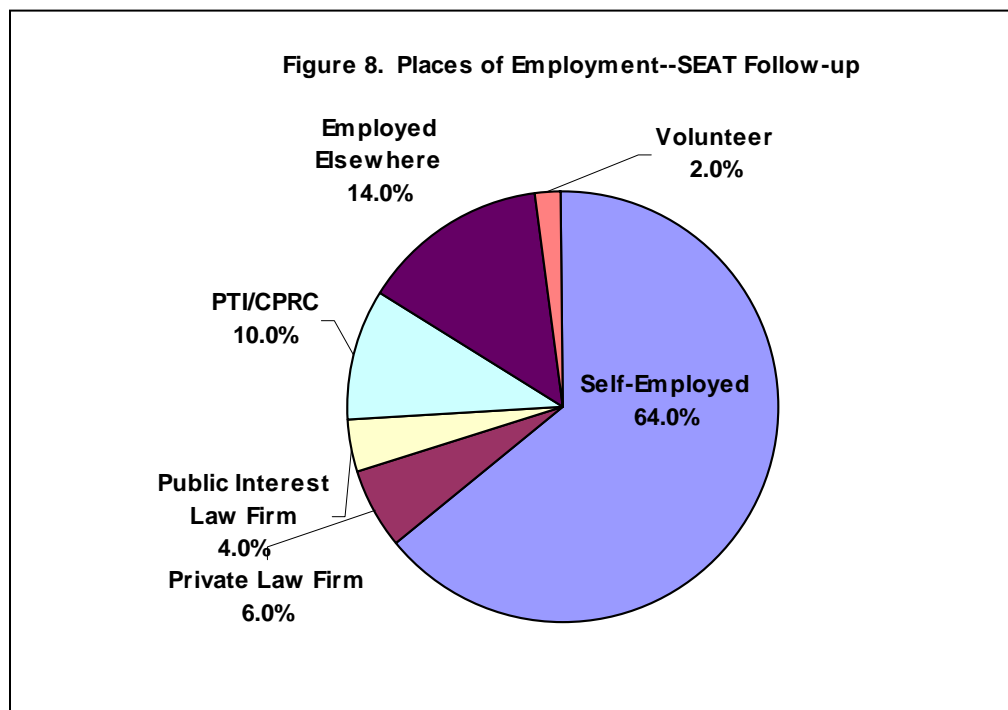
Employment History Post-SEAT:

All 50 respondents stated they were currently involved in special education advocacy, approximately one-quarter (1/4) stated they had had more than one position, and the remaining 72% stating they had had one position since leaving SEAT. Two percent (2%) were providing voluntary advocacy services, and the remaining 98% were receiving payment for their services.

Where are SEAT Graduates Employed?

Figure 8 shows that the majority of the SEAT graduates (64%) in our follow-up sample reported they are self-employed.

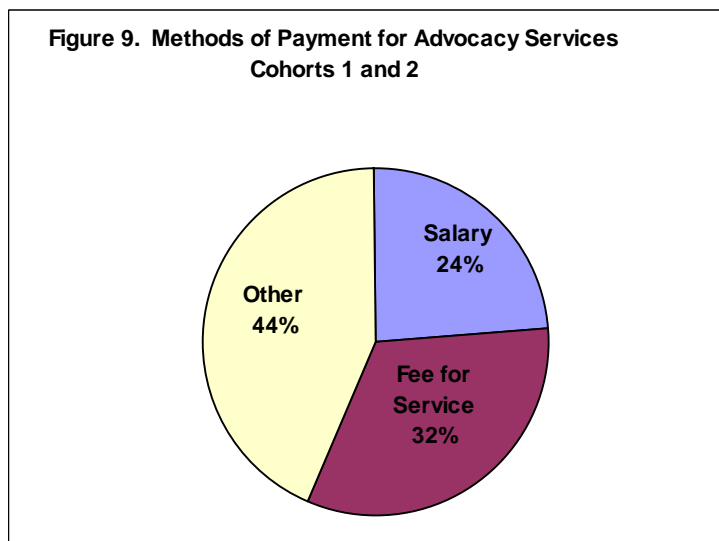
Approximately 10% were “working” at a Public Interest or Private Law Firms; another 10% reported working at a Parent Training and Information Centers (PTI) or Community Parent Resource Centers (CPRC), and about 14% reported working elsewhere. It is not clear how many are volunteers vs. paid in these settings.

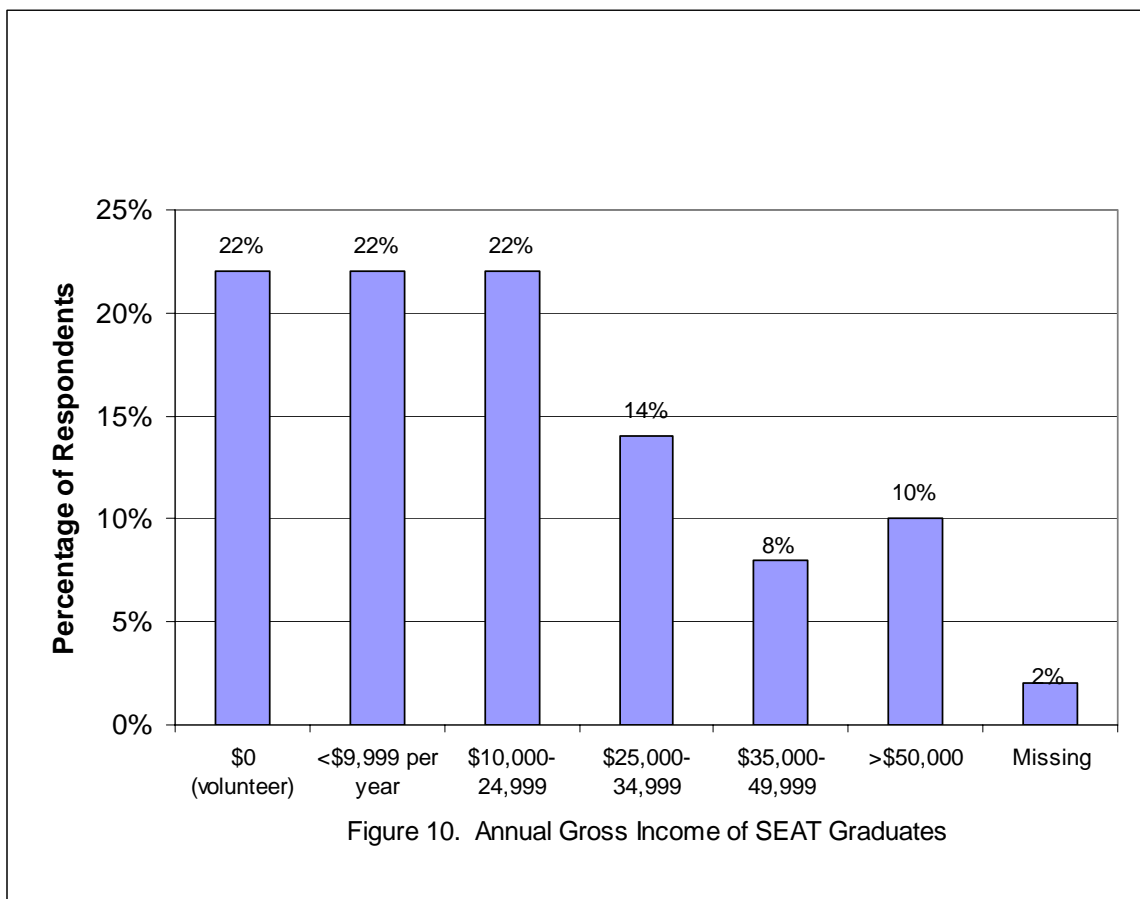


How are SEAT Graduates compensated for their services?

Thirty-two percent (32%) of respondents reported they are paid through “fee for service,” 24% are salary employees; and 44% are paid through other mechanisms.

Figure 10 displays reported ranges of salary in our follow-up sample. Two-thirds (2/3) of the sample reported making less than \$25,000 per year, with 1/5 of the sample reporting they are volunteers and receive no



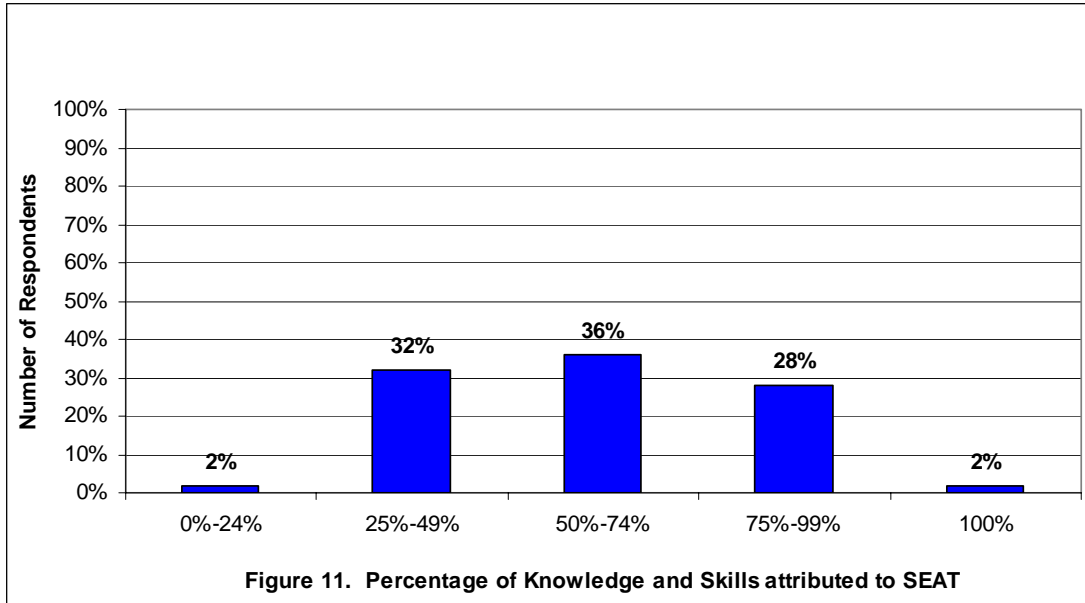


compensation. The remaining one-third (1/3) earn \$25,000 or more, with 10% reporting a salary of \$50,000/year or more.

Benefits. Only eighteen percent (18%) of the sample reported receiving benefits –these are likely those who earn \$35,000/year or more.

DID SEAT TRAINING CONTRIBUTE TO SEAT GRADUATES KNOWLEDGE AND SKILLS?

When asked how much of their current knowledge and skills could be attributed to their SEAT training, almost 2/3 of respondents reported that more than half of their knowledge and skills could be attributed to their SEAT training. Thirty-two percent (32%) reported that 1/4 – 1/2 of their knowledge could be attributed to SEAT. See Figure 11.



FUTURE DIRECTIONS FOR SEAT:

1. Explore the potential for designating levels of advocates, with core competencies and skills identified for certain aspects of the profession. For example – accompanying a parent to an IEP meeting and assisting in non-adversarial advocacy is less intensive than assisting in mediation or conflict resolution.
2. Identify characteristics that increase likelihood that trainees satisfactorily complete the SEAT training. How to measure readiness for SEAT?
3. Explore alternative ways to meet the requirement of practicum experience where qualified practicum supervisors are not readily available
 - ♦ What to do when there are few qualified practicum supervisors within a state?
 - Video-conferencing?
 - Group Case Review and Technical Assistance
 - ♦ Models of Delivery
 - Providing some practicum during the course (e.g., LRLC model)
 - Post –Course
4. Building capacity for the continuum of special education advocacy training through collaborations with existing state entities such as P&A's, Parent Information and Training Centers. Are these mechanisms for more formal “Pre-SEAT” training and experience?
5. Model for replicating SEAT Training Nationwide
 - ♦ Sell curriculum as model – no oversight
 - ♦ CHLA and COPAA jointly retain rights to curriculum and approve sites who meet criteria as defined above
 - ♦ College Level Courses
 - Online
 - In person
 - ♦ Other?

Issues: What is a reasonable cost for SEAT training?

6. Fully explore the process required and feasibility of Certification. While we believe this project has contributed significantly to defining the practice of special education advocacy and the core competencies required; the scope of the project was not broad enough to tackle the multitude of issues and considerations required to develop a certification program. Certification and accreditation programs sponsored by a professional trade or membership organization has been articulated by many as desirable for special education advocates, and such a program that is well structured would appear to confer an array of valuable benefits to the applicable industry and the public who utilizes the services of the certified individuals.

At the same time it is important to recognize that implementing such an intensive

standard-setting and certification program is not without risk and effect – potentially significant.

- ♦ There is already a huge gap between those who can afford to pay for lawyers and other professionals to assist them and those who cannot. Those without the ability to pay for basic assistance may be further reduced in understanding and accessing their rights and perhaps victimized by what is clearly an unbalanced educational system..
- ♦ Research demonstrates that the process can take several years (3-5) and hundreds of thousands of dollars. Significant issues need to be addressed including levels of certification; unintended effect of the certification program, on balance, to restrain competition in the relevant market more than it promotes competition and access; and other such factors.
- ♦ Although clearly in the public interest and beneficial to members and others, self-regulation programs such as certification programs may raise risks of legal liability under five principal areas in connection with the operation of certification programs: antitrust, negligence (liability to third parties), due process, defamation, and ADA compliance. Other theories of liability exist as well – such as theories of warranty and enterprise liability – but these five areas make up the majority of claims filed against certification programs.

Certification is only the first step in the process. Significant resources to allow for investigation into complaints and oversight would also need to be provided. Variance by state necessitates investigation into whether a national model would work.

7. Research on the impact of trained Special Education Advocates on Educational Rights and Protections and parent empowerment

- ♦ Impact, if possible to discern, on number of cases that go to Due Process Hearing
- ♦ Resolution before due process
- ♦ Reductions in Cost
- ♦ Increase in quality of parent participation when Special Education Advocates are involved
- ♦ Cultural differences in the utilization of special education advocates
- ♦ Others?