

November 16, 2020

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

RE: Committee on the Unauthorized Practice of Law, Opinion 56

To Whom It May Concern:

The Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit disability civil rights law and policy organization dedicated to protecting and advancing the civil and human rights of people with disabilities. DREDF was founded in 1979 by a unique alliance of adults with disabilities, and parents of children with disabilities. DREDF is board- and staff-led by members of the disability and parent communities for whom it advocates. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal disability civil rights laws.

A significant portion of DREDF's work is directed at securing and advancing the educational entitlements of children with disabilities under laws including the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act. As a Parent Training and Information Center (PTI) funded by the US Department of Education, DREDF serves families of children with disabilities and disabled young adults in 33 California counties.

Congress enacted the PTI network to assist parents to “communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services,” “participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C,” and “participate in activities at the school level that benefit their children.” 20 U.S.C. § 1471(b)(4)(B), (C), (F). Consistently, Congress granted parents the discretion to include as part of the IEP team “other individuals who have knowledge or special expertise regarding the child.” 20 U.S.C. § 1414(d)(1)(B)-(d)(1)(D).

Despite these provisions, Opinion 56 as currently drafted would discourage and prohibit necessary non-attorney supports, including PTI education advocates, for families and students seeking to enforce their educational rights. In particular, the prohibition of non-attorney advocates “speaking on behalf” of parents and students is likely to chill the exercise of important educational rights.

The PTI network is an integral part of the special education system. In passing the IDEA, Congress designed a system that provides parents and students with multiple opportunities to advocate for their educational rights. But the system is complex enough to confuse even experienced attorneys, not to mention parents and students. The IDEA and analogous Section 504 frameworks include an entire lexicon of specific terms and phrases that trigger important procedural and substantive rights. Parents and students can learn this lexicon and become adept at navigating this system, but doing so takes time that many do not have while children are denied important rights.

In these situations, education advocates play a key role. Without providing legal representation, PTI education advocates act as a bridge between parents' needs and desires and the school district. For example, parents of students with behavioral disabilities know that their children need certain behavioral supports and that an expert should decide which supports are best. But few parents know what "functional behavioral assessments" or "behavior intervention plans" are or that their child has a right to them. Few know they have a right to an "independent educational evaluation," even when they know that their children sometimes need to be assessed by someone with more expertise. Most families are neither proficient in the language of IDEA or Section 504, nor familiar with the terminology of other relevant federal laws such as Title VI of the Civil Rights Act of 1964, the Every Student Succeeds Act, and the McKinney-Vento Homeless Assistance Act. And while parents may attempt to communicate their desires, school districts too often require parents to use complex legalese to trigger these safeguards, preventing parents and students from accessing their rights.

These requirements especially hurt parents who already struggle to access services because of language barriers, housing status, immigration status, trauma, involvement with the criminal legal system, their own disability, and/or their own history of educational challenges. For example, many Native American families struggle with school participation in part because of a history of educational trauma related to boarding schools and the separation of children from their families and culture. Other families may be unsheltered or immigrant families who worry that their advocacy may trigger retaliation with immigration or child protection authorities. Black and Latinx families are also impacted by trauma and exclusion, creating barriers to participation in special education proceedings. It is in these situations that education advocates must be able to "speak on behalf of" parents at IEP meetings – meaning, to explain the parents' desires using the specific terminology that school districts understand, and to communicate the relevant information that the parents have asked them to share.

Bilingual education advocates are particularly essential to the IEP process. District-provided interpreters do not always have the expertise in IDEA vocabulary to be effective. Advocates who speak both languages can ask clarifying questions to ensure that parents understand and are empowered to participate in the proceedings, as intended by Congress. This form of advocacy is not the unauthorized practice of law. And without such advocacy, parents may sign documents they do not understand or that go against their wishes, because they are written in a language they do not read. Parents may fail to exercise key rights because of communication barriers.

The participation of education advocates can also help to disrupt the preschool-to-prison pipeline, which disproportionately affects Black, Native, and Latinx students who lack access to adequate services and educational opportunities. But without the support and information provided by education advocates, including as members of the IEP team, see 20 U.S.C. § 1414(d)(1)(B)-(d)(1)(D), the IDEA's key protections often go unfulfilled. This is particularly true for low-income parents who cannot afford an attorney and who are then forced to advocate for themselves without the necessary specialized vocabulary and knowledge.

The fact that education advocates speak during IEP meetings to voice the desires of parents and students, at their request, does not mean that education advocates are practicing law without a license. Education advocates like those who staff DREDF's PTI do not provide legal advice or advise families that one option is better than another. Rather, they inform parents of the range of options they have under the IDEA and help parents articulate their choices in the appropriate terminology. They provide information about resources and supports that parents need – and that school district personnel may not know about.

Having education advocates attend IEP meetings to partner with and support parents empowers families. Education advocates provide a model of effective participation, and thereby teach families how to take on a more active role. Over time, many parents learn by example and become more independent in advocating for their children, collaborating with and questioning school districts to reach agreed-upon education plans.

We urge the Committee to revise Opinion 56 to permit and include the role of education advocates. In particular, we urge the Committee to delete the language that prohibits non-attorney advocates from “speaking for” families and children in IDEA proceedings.

Sincerely,



Claudia Center
Legal Director



Malhar Shah
Staff Attorney, Special Education