



November 16, 2020

Via E-mail to Comments.Mailbox@njcourts.gov

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

Re: NJEA's Comments on Opinion 56

Dear Ms. Johnston,

Please accept this letter as comments submitted on behalf of the New Jersey Education Association in response to the request for public comments on the NJ Supreme Court's Committee on the Unauthorized Practice of Law's Opinion 56, Non-Lawyer Special Education Consultants and the Unauthorized Practice of Law.

We would first like to address the Committee's questions regarding the role of non-attorney special education consultants in IEP meetings and in mediation proceedings concerning IEPs. In our collective experience and that of our members, the existing practice is often for these consultants to attend IEP meetings and mediation proceedings along with the child's parent(s) and/or guardian(s). The consultants bring their experience and familiarity with the process to the table to guide the parent(s) and/or guardian(s) through the procedural aspects of a sometimes-technical process that is often unfamiliar to them. Consultants also aid them with articulating their concerns and advocating for their child's needs, and allows a more removed, less emotional voice for the parent(s) and/or guardian(s) to be present. Often the consultant's role is to speak on the behalf of the parent(s) and/or guardian(s), and our experience is that the consultant's participation is more often than not a benefit to the overall process, and ultimately, ensures the best's interests of the child are advocated for.

Typically, the parent(s) and/or guardian(s) are present in the room during the IEP meetings and are active participants, along with the consultants, and work as a team with their consultants. Therefore, we are not led to believe there is great cause for concern that consultants will abuse any authority they are given to speak on behalf of parent(s) and/or guardian(s) outside of their presence. However, if parent(s) and/or guardian(s) wish to grant that authority, that is their right and their prerogative. There are many instances in which individuals are able to enter private contractual

relationships or principle-agent relationships that do not automatically equate to the practice of law, and we believe that IEP meetings and mediations are among those situations.

We would also like to provide our perspective on the Committee's questions regarding safeguards and protections for parent(s) and/or guardian(s) who choose to retain consultants, and criteria/qualifications necessary to serve as a consultant during the IEP process. Noticeably absent from Opinion 56 is any discussion of 34 C.F.R. § 300.321, which provides that the IEP team includes "[a]t the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." The regulation further makes clear that "[t]he determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team." Therefore, the imposition of qualifications or criteria on those who are permitted to act as consultants are directly contrary to the regulatory language which is clear that the discretion to determine the individual's qualifications rests with the parents.

Further, other than the brief mention of one grievance, Opinion 56 does not outline abuses of authority by non-attorney consultants over the 30 years consultants have been involved in the IEP process that would necessitate the imposition of safeguards. In our collective experience, consultants have been a beneficial addition to the IEP team. Moreover, parent(s) and/or guardian(s) are able to include any safeguards they feel are necessary in their private contractual relationship with the consultant of their choosing, and are protected by fiduciary duties imposed upon any principle-agency relationships they decide to enter.

Lastly, in addition to the benefits already outlined regarding the involvement of consultants in the IEP process, there are added benefits that serve the public interest. It has been our observation that more affluent families tend to hire attorneys to represent them in IEP proceedings; many families opt for consultants as a lower cost option, or in the case of volunteer consultants, a free option, that is more readily available to those with less resources. This resolves any imbalance of power that exists due to parent(s) and/or guardian(s) lack of familiarity with the IEP procedure. The presence of a consultant also has the effect of keeping the tone of the meeting on the educational needs of the student. When a parent or guardian brings legal representation, the school district responds in turn and brings their legal counsel into the meeting. This takes the focus off of the educational aspects and unnecessarily escalates the matter into an adversarial, legal proceeding. It is more likely for a meeting without attorneys to result in a cooperative atmosphere which results in an IEP that both the school district and the parent(s)/guardian(s) are content with, and ultimately avoids litigation. The end result is a savings to the district and the taxpayer since legal fees were avoided, and more importantly, the student's educational needs are met more quickly.



We thank the Committee for the opportunity to provide our comments on Opinion 56. Thank you for your attention to this matter.

Very truly yours,

/s/ Aileen M. O'Driscoll

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AOD

cc: Marie Blistan, NJEA President
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