Statement of Professors of Legal Ethics, Poverty Law, and Disability Law to the New Jersey Bar Committee on the Unauthorized Practice of Law

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(additional signatories listed at the conclusion of this Comment)

INTEREST OF SIGNATORIES

As teachers and scholars in the areas of legal ethics, poverty law, and disability law, signatories to this Comment have an interest in promoting access to justice and equal treatment for people living in poverty and people with disabilities, including children with disabilities and their families. The signatories to this statement have devoted their careers to furthering these vital goals. For the reasons outlined in this Comment, the signatories believe that the Committee's proposed opinion is unwise and contrary to law in limiting parent advocates' speech at meetings to create an Individualized Education Program (IEP) under the federal Individuals with Disabilities Education Act (IDEA); limiting parent advocates' participation in mediation under the IDEA; and barring advocates from receiving payment from parents for their services.[1]

[*] Professor Margulies received his B.A. from Colgate University and his J.D. from Columbia Law School. A member of the bar in Rhode Island, Florida, and New York, he is a former chair of the American Association of Law Schools Section on Professional Responsibility and author of over 70 law review articles (including books and book chapters) on professional responsibility, immigration law, and national security law, including *Legal Dilemmas Facing White House Counsel in the Trump Administration: The Costs of Public Disclosure of FISA Requests*, 87 Fordham L. Rev. 1913 (2019). Professor Margulies served as co-counsel for *amicus curiae* American Bar Association in *Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that failure to advise a criminal defendant of the immigration consequences of a guilty plea constitutes ineffective assistance of counsel under the Sixth Amendment). In addition, Professor Margulies has an interest in this matter as the spouse of Ellen M. Saideman, Esq., who is submitting a statement to the Committee in her capacity as a member of the board of the Council of Parent Attorneys and Advocates (COPAA) and co-chair of COPAA's *Amicus* Committee.

[1] As the proposed opinion indicates, the New Jersey Supreme Court long ago recognized that lay advocates could appear in adversarial due process hearings under the IDEA that occur if the parents of a child with disabilities contest the IEP. See Proposed Opinion at 3 (citing N.J. Court Rule 1:21-1(f)(8)). The proposed opinion also rightly indicates that Rule 1:21-1(f) bars lay advocates from receiving a fee from a client for appearing in IDEA due process hearings. *Id.*; *see also Arons v. New Jersey St. Bd. of Educ.*, 842 F.2d 58, 62 (3d Cir. 1988) (upholding this rule, while acknowledging that an advocate may receive payment as an "expert consultant").

SUMMARY

The work of IDEA parents' advocates illustrates that defining the unauthorized practice of law is a "practical" judgment, not a mere "theoretical" exercise. *See In re Opinion No. 33 of the Comm.*, 733 A.2d 478, 484 (N.J. 1999). The everyday landscape in which ordinary people seek to order their lives and vindicate their rights includes frequent overlap between the practice of law and "permissible business and professional activities by non-lawyers." *See New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Bds.*, 461 A.2d 1112, 1114 (N.J. 1983) (citation omitted). This overlap plays out in the help to parents of children with disabilities that advocates give at collaborative, nonadversarial meetings on an Individualized Educational Program (IEP) under the federal Individuals with Disabilities Education Act (IDEA). *See* 20 U.S.C. § 1414(d)(1)(B)(vi) (defining the "IEP team" to include participation, "at the discretion of the parent or the agency [school district]" of "individuals who have knowledge or special expertise regarding the child").

The IEP *does not legally bind parents*. Later phases of the IDEA framework that parents can trigger if they are dissatisfied with their child's IEP provide for resolution by binding legal agreements. *See* 20 U.S.C. § 1415(e)(2)(F) (providing for binding agreement to resolve mediation); 20 U.S.C. § 1415(f)(1)(B)(iii) (written agreement to settle due process hearing). The statutory provision for the IEP process, 20 U.S.C. § 1414, does not authorize agreements that bind parents, who can participate in an IEP meeting and then contest an IEP through the IDEA's remedial provisions.

Much of the work of parents' advocates as part of the IEP team overlaps with non-legal sources of advice and expertise. Parents' advocates often have specialized experience in the education of children with disabilities. *See* Meghan M. Burke, Samantha E. Goldman, S.M. Hart & R.M. Hodapp, *Evaluating the Efficacy of a Special Education Advocacy Training Program*, 13 J. Pol'y & Prac. in Intellectual Disabilities 269, 270 (2016). Many advocates are themselves parents of children with serious disabilities. *Id*. (noting that in cohort of advocates undergoing training, approximately 60% were parents of persons with disabilities, particularly disabilities such as Down syndrome, cerebral palsy, and autism, while the remainder were professionals).

In the course of their work, advocates will often discuss both the IDEA's legal standard of a "free appropriate public education" (FAPE) and the curriculum and services that will embody FAPE in a particular case. The latter discussion entails a clinical and developmental assessment

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The present Comment does not challenge the relevant provisions of N.J. Court Rule 1:21-1(f), dealing with adversarial due process hearings under the IDEA.

of the child's needs as well as interpersonal work on keeping lines of communication open between parents and school professionals. Advocates' "special expertise regarding the child," 20 U.S.C. § 1414(d)(1)(B)(vi), promotes the "collaboration" between the parent and school professionals that Congress envisioned as an integral part of the IEP process. *See Schaffer v. Weast*, 546 U.S. 49, 53 (2005) (discussing the statute's creation of a "cooperative process … between parents and schools"); *see also Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 530 (2007) (explaining the importance Congress placed on parents' participation in the "substantive formulation of their child's educational program"). Advocates' participation as members of the IEP team does not constitute the practice of law, even though that participation—like the input of other IEP team members such as parents, teachers, therapists, principals, and directors of special education—occurs against the backdrop of the IDEA's procedural and substantive framework.

Alternatively, even if a narrow facet of the advocates' service constitutes the practice of law, permitting that work is clearly in the public interest. Many children with disabilities come from low- and middle-income families that cannot afford a lawyer. *See* Elisa Hyman, Dean Hill Rivkin & Stephen A. Rosenbaum, *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, 112 (2011). Moreover, advocates surmount barriers to parental participation such as school professionals' propensity to employ technical jargon when discussing children's educational needs. *See* Meghan M. Burke, *Improving Parental Involvement: Training Special Education Advocates*, 23 J. Disability Pol'y Stud. 225, 227 (2013).

Finally, abundant sources of training currently exist for advocates. For example, the Council of Parent Attorneys and Advocates (COPAA) sponsors a rigorous and comprehensive training regimen, as well as ongoing continued education. *See* COPAA, *Training Options*, https://www.copaa.org/page/SEAT (discussing phased Special Education Advocate Training (SEAT). COPAA also recommends that advocates subscribe to COPAA's voluntary ethics code, which includes detailed provisions on competence, communication, candor with third parties, conflicts of interest, disclosure of an advocate's non-lawyer status, and written agreements with clients. *See* COPAA, *Voluntary Code of Ethics for Advocates*, https://www.copaa.org/page/Adv_Code_Of_Ethics.

I. A PARENT ADVOCATE'S SPEECH AT AN IEP MEETING DOES NOT CONSTITUTE THE PRACTICE OF LAW

In New Jersey, "practical, not theoretical" factors have guided the definition of the practice of law. *See In re Opinion No. 33 of the Comm.*, 733 A.2d 478, 484 (1999). Under this practical approach, parent advocates are not engaging in the practice of law when they participate in the IEP "team," as federal law expressly permits. *See* 20 U.S.C. § 1414(d)(1)(B)(vi).

A. A "Practical" Definition of the Practice of Law Does Not Bar Work That Incidentally Overlaps with Lawyers' Activities

The New Jersey Supreme Court has repeatedly recognized that "the practice of law is not confined to litigation but extends to legal activities in many non-litigious fields which entail specialized knowledge and ability … the line between such activities and permissible business and professional activities by non-lawyers is indistinct." *See New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Bds.*, 461 A.2d 1112, 1114 (N.J. 1983) (citation omitted); *see also In re Opinion No. 26 of the Comm.*, 654 A.2d 1344, 1345-46 (N.J. 1995) (explaining that "what constitutes the unauthorized practice of law involves more than an academic analysis" and that the court's "power over the practice of law … is not a power … to protect lawyers, but to protect the public"); *In re Opinion No. 33 of the Comm.*, 733 A.2d 478, 484 (1999) (noting that "practical, not theoretical, considerations" inform analysis of whether the court should prohibit an activity "that is arguably the practice of law" and that "what constitutes the practice of law does not lend itself to precise and all-inclusive definition") (citation omitted).

A range of legal regimes have long supported lay advocates and experts engaging in activity with some overlap with the practice of law. Federal law permits nonlawyers to assist e parties in bankruptcy proceedings. *State Unauthorized Practice of Law Comm. v. Paul Mason & Assocs., Inc.*, 46 F.3d 469, 470 (5th Cir. 1995). Nonlawyer advocates can file documents such as proofs of claim in bankruptcy matters and negotiate certain agreements with debtors' counsel. Federal law also allows registered patent agents to assist in the preparation of patent applications. *Sperry v. Florida ex rel. the Fla. Bar*, 373 U.S. 379 (1963). In addition, under both federal and state law, nonlawyers can provide assistance in mediation and arbitration. *See* New Jersey Advisory Comm. on Prof. Ethics, Opinion 676 (Apr. 4, 1994).

Several states around the country are also initiating pilot programs for advocates in areas such as domestic violence, with encouragement from the American Bar Association (ABA). *See* Stephanie Francis Ward, *Training for Nonlawyers to provide legal advice will start in Arizona in the fall*, ABA J. (Feb. 6, 2020), https://www.abajournal.com/web/article/training-for-nonlawyers-to-provide-legal-advice-starts-in-arizona; *see also* Laura Bagby, *ABA Votes for Revised Resolution Encouraging Legal Innovation*, 2 Civility (Ill. S. Ct. Comm'n on Professionalism Feb. 20, 2020), https://www.2civility.org/aba-votes-for-revised-resolution-encouraging-legal-innovation/ (noting that ABA approved resolution encouraging innovation in provision of legal services, although regulation expressly disclaimed urging revision of ABA Model Rules of Professional Conduct, including those governing unauthorized practice of law). These historical and emerging trends demonstrate that participation of lay advocates as members of IEP teams under the IDEA is not novel; rather, it is consistent with longstanding frameworks governing the interaction of legal representation and lay assistance.

B. Collaboration in IEP Meetings Does Not Constitute the Practice of Law

Under the New Jersey Supreme Court's practical approach to the unauthorized practice of law, the "collaboration" at the core of an IEP meeting under the IDEA clearly does not constitute

the unauthorized practice of law. *Schaffer*, 546 U.S. at 53. As the United States Supreme Court has stated in construing the IDEA, the IEP process is "cooperative," not adversarial. *Id.* The statutory framework turns adversarial with a due process hearing *only* if the parent and school have *failed* to agree on IEP. 20 U.S.C. § 1415. Signaling this commitment to collaboration in the IEP process, the IDEA describes parents as members of the IEP "team." § 1414(d)(1)(B); *Schaffer*, 546 U.S. at 53.

The IDEA's terminology speaks volumes about the collaborative nature of the IEP process. Members of a "team" are not adversaries. Teammates are collaborators, engaged under the IDEA in the joint process of assembling a package of curricular modifications and services that will meet the educational needs of a child with disabilities. § 1414(d)(3)(A)(iv) (mandating that an IEP team consider the "academic, developmental, and functional needs of the child"). As full team members, parents are entitled "to participate … in the substantive formulation of their child's educational program." *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 530 (2007). In its collaborative work, the entire team must "take into account any 'concerns' parents have 'for enhancing the education of their child.'" *Id*. (citing § 1414(d)(3)(A)(ii)). A parent may invite an advocate to join the IEP "team." *See* 20 U.S.C. § 1414(d)(1)(B)(vi) (defining the "IEP team" to include participation, "at the discretion of the parent or the agency [school district]" of "individuals who have knowledge or special expertise regarding the child").

Under the IDEA and in practice, an IEP meeting is an open discussion, not a formal legal proceeding. The IEP team meeting resembles the gathering of a health-care treatment team or foster-care planning team. Members of the team, including teachers, therapists, administrators, parents, and advocates, exchange ideas about appropriate goals and the mix of teaching and services that can achieve those goals. § 1414(d)(3)(A)(i). Teamwork on a plan for each child's FAPE is the premise of the process. The familiar trappings of a legal proceeding, including testimony under oath, would be both foreign and counterproductive in this collaborative setting.

The IEP, unlike documents in later phases of the IDEA framework, *does not legally bind parents*. Under the IDEA, parents dissatisfied with an IEP can request mediation, 20 U.S.C. § 1415(e), or an adversarial, evidentiary impartial due process hearing. 20 U.S.C. § 1415(f). The parties can resolve a matter taken to mediation through a written, duly executed, and *binding* agreement. 20 U.S.C. § 1415(e)(2)(F). The parties can similarly resolve a matter in which the parents have requested a due process hearing. 20 U.S.C. § 1415(f)(1)(B)(iii); *see also D.R. by M.R. v. East Brunswick Bd. of Educ.*, 109 F.3d, 896, 898-901 (3d Cir. 1997) (holding that after parents sought a due process hearing under the IDEA and then consented to a settlement agreement with the district, that agreement was binding). In contrast, the collaborative IEP process set out in § 1414 of the IDEA contains no such provision for creation of a legally binding document.

One essential aspect of the IEP process's collaboration is the provision of accurate and complete information about the child. In preparation for, participation in, and follow-up to the IEP meeting, an advocate will often pursue tasks that do not require legal expertise or judgment

per se, including "educating professionals about the child's specific strengths and needs." Meghan M. Burke, Samantha E. Goldman, S.M. Hart & R.M. Hodapp, *Evaluating the Efficacy of a Special Education Advocacy Training Program*, 13 J. Pol'y & Prac. in Intellectual Disabilities 269, 269-70 (2016).

Acting in this capacity, advocates can supplement the knowledge of another team member in a fashion that assists the overall collaborative process. For example, in one documented case involving a deaf student, the teacher assigned the student a desk next to an electronic speaker in the classroom set at a high volume level. *See* Tawny Holmes Hlibok, *Education Advocates: A New Frontier of Advocacy*, 20 Odyssey: New Directions in Deaf Educ. 12, 14 (2019). Apparently, the teacher believed that since the student was deaf, placing the student next to the speaker would not present a problem. When the student complained of headaches, the teacher accused the child of malingering. An advocate was able to present the IEP team with an audiogram that revealed that the student had some ability to hear and was also sensitive to sonic vibrations. As a result, the teacher agreed to assign the student a different seat further from the speaker. *Id.* This everyday example of gathering information and presenting it to the IEP team typifies the advocate's work. *Id*. at 16.

To be sure, the IDEA's standard of a FAPE is the backdrop for all the discussions, just as the "best interests of the child" would be the backdrop in a foster-care planning meeting. *See Suter v. Artist M.*, 503 U.S. 347, 358-59 (1992) (discussing condition of federal funding for foster care and adoption services that the state plan for "reasonable efforts" to prevent a child's removal from and return to his home). But this statutory backdrop does not transform team members' open discussion of a child's educational needs and goals into an adversarial trial by fire. Rather, the statutory standard *informs* the team's deliberations, as the "best interests of the child" standard informs foster-care planning.

Similarly, a parent advocate's work in an IDEA mediation under 20 U.S.C. § 1415(e) is not the practice of law. Like the IEP collaborative process, mediation involves an open discussion in which parties to a dispute and third-party neutrals seek to reach a solution. Those discussions entail myriad factors and competencies that play out against the backdrop of a legal standard. For over a quarter of a century, New Jersey has recognized that nonlawyers can play valuable roles in mediation. *See* New Jersey Advisory Comm. on Prof. Ethics, Opinion 676, *supra*. That same inclusive perspective should hold true for mediation under the IDEA.

The proposed opinion's confusing treatment of negotiation highlights the impractical nature of the opinion's distinctions. According to the proposed opinion, a non-lawyer advocate *may* "assist in negotiations" between parents and the school district at an IEP meeting, but *may not* "speak on [the parents'] … behalf." Proposed Opinion, at 6 & n. 1. But IEP meetings under the IDEA are not a game of "Mother May I?" Complying with the opinion's strictures would stymie the collaboration that Congress contemplated.

To "assist in negotiations" but not "speak on [the parents'] … behalf," an advocate would have to resort to an array of distracting tactics. The advocate would have to pass the parent copious notes, whisper at length in the parent's ear, or pull the parent aside for an extended conversation. Each of these devices would distract all of the IEP meeting's participants, or else stop the meeting in its tracks. Since school professionals are always busy and parents have other pressing commitments, these distractions would break the flow that makes an IEP meeting successful. Mandating such contortions is particularly problematic when a parent faces a language barrier or has a communications-related disability. *See* Debra Chopp, *School Districts and Families Under the IDEA: Collaborative in Theory, Adversarial in Fact*, 32 J. Nat'l Ass'n Admin. L. Judiciary 423, 437 (2012) (explaining that "the difficulties parents face in IEP meetings are particularly pronounced when parents and school district personnel are separated by language barriers and/or socio-economic or educational divides").

The proposed opinion thus sacrifices common sense and parental participation on the altar of an unduly rigid definition of the practice of law. The Committee should rethink this perverse result.

II. PERMITTING ADVOCATES' SPEECH AT IEP MEETINGS AND THEIR PAYMENT BY PARENTS SERVES THE PUBLIC INTEREST

Even if advocacy is considered the practice of law, the public interest factor that the New Jersey Supreme Court has regularly cited suggests that parental access to advocates should be broad. *In re Opinion No. 26*, 654 A.2d at 339-54; *In re Opinion No. 33*, 733 A.2d at 484-86. That access should include both IEP meetings and IDEA mediation. Parents' needs and the scarcity of legal representation demonstrate the public interest that advocates serve.

A. Parents Have Severe Financial Needs That Rule Out Most Sources of Legal Representation

For parents of children with disabilities in New Jersey and elsewhere, the need is overwhelming. Nationally, a majority of the six million-plus children receiving services under the IDEA are from families with modest resources who cannot afford to hire a lawyer. *Cf.* Susan E. Mason, *Children with Disabilities and Poverty: Upholding Well-Being Across the Child Welfare and Education Systems*, 95(3) Families in Soc'y: J. Contemp. Soc. Servs. 151, 151 (2014) (noting that as of 2014, there were approximately 6.5 million children across the country eligible for special education services); Hyman, et al., *supra*, at 112. At least one quarter of these families are below the poverty level set by the government, and two-thirds make $50,000 or less. Hyman, et al., *supra*, at 112.

Moreover, the need to care for a child with a serious disability *exacerbates* poverty. Parents of children of disabilities often spend substantial sums on medical and other services, since public programs do not pick up the full costs of such assistance. Susan L. Parish & Jennifer M. Cloud, *Financial Well-Being of Young Children with Disabilities and Their Families*, 51 Soc. Work 223, 224 (2006); Marcia K. Meyers, Emma Lukemeyer & Timothy

Smeeding, *The Cost of Caring: Childhood Disability and Poor Families*, 72 Soc. Serv. Rev. 209, 212 (1998).

In addition, parents often need to devote extraordinary amounts of time to addressing the needs of a child with disabilities. The time required for these heroic efforts reduces the time that parents can spend in the workplace. That time crunch can thus have "devastating financial consequences" that deepen the financial deprivation suffered by such families. *See* Meyers, et al., *supra*, at 222; Susan L. Parish, Roderick A. Rose, Jamie G. Swaine, Sarah Dababnah & Ellen Tracy Mayra, *Financial Well-Being of Single, Working-age Mothers of Children with Developmental Disabilities*, 117(5) Am. J. Intellectual & Devel. Disabilities 400, 401 (2012) (noting that "[m]others often face the challenge of balancing their role as a caregiver with employment … resulting in reduced maternal employment"); *id*. at 408 (observing that "the increased financial burden of caring for a child with developmental disabilities puts both the child with a disability and the single mother at increased risk for poverty and its associated negative outcomes").

These profound resource limitations skew parental participation in the IDEA's procedural scheme. Consider IDEA due process hearings, in which a parent dissatisfied with an IEP seeks relief in an adversarial, evidentiary hearing with a school district lawyer on the other side and an impartial hearing officer presiding over the proceeding. Only affluent parents can afford the thousands of dollars in legal fees that a competent lawyer will charge for a due process hearing. *See* Hyman, et al., *supra*, at 113-14; *see also E.H. v. Wissahockon Sch. Dist.*, 2020 U.S. Dist. Lexis 199469, at 16 (E.D. Pa. Oct. 27, 2020) (in awarding statutory attorney's fees under the IDEA, court set attorney's fees for experienced lawyer at $550/hour). Free sources of legal representation are limited to low-income families, and those sources do not have the staffing to meet the need. Hyman, et al., *supra*, at 113.

Because a due process hearing is prohibitively expensive for the overwhelming majority of low- and middle-income parents, assistance at the IEP stage is crucial. When parents and the school agree on an IEP, parents have no need to seek recourse in an expensive due process hearing. Unfortunately, there are daunting barriers to parental participation in the IEP process.

B. Parents Face Daunting Barriers to Participation in the IEP Process

. Parents report that they often feel intimidated or out of place at IEP meetings. *See* Meghan M. Burke, *Improving Parental Involvement: Training Special Education Advocates*, 23 J. Disability Pol'y Stud. 225, 227 (2013). The terminology used by school professionals is one factor that dampens parental participation. School professionals' sheer numbers add to the problem. In addition, school professionals may use technology that inhibits collaboration with parents. Finally, on some occasions the attitudes of school professionals may contribute to parents' marginalization.

Technical language at IEP meetings is a perennial barrier to effective parental participation. *Id*. For example, a school district professional at an IEP meeting might inform the

team that, "[a student's] DRA was a level 2 and now is a level 6." *See* Jessica K. Bacon & Julie Causton-Theoharis, *'It should be teamwork: a critical investigation of school practices and parent advocacy in special education*, 17 Int'l J. Inclusion Inclusive Educ. 682, 690 (2013) (quoting actual IEP meeting observed by the authors). While the use of acronyms might be a convenient shorthand for school professionals on the team, a parent might not know that "DRA" refers to "developmental reading assessment." Feeling out of touch with the prevailing mode of professional discourse, a parent could readily lament, "I didn't know any things that were being said there [at the IEP meeting] … [the school team] were … discussing among themselves." *Id*. at 690; *see also* Chopp, *supra*, at 436 (remarking on "expertise asymmetry between parents and school districts"). Advocates can "translate" this jargon and also articulate parental positions in terms that are helpful to school professionals.

Technology can also be a barrier for parental participation. For example, some school districts now use software to generate an IEP. That software often comes equipped with drop-down menus that limit choices of programming or services. Of course, the IDEA requires that the IEP provide choices that constitute a FAPE, whatever the drop-down menu decrees. But school district personnel sometimes view the technology as dictating *substantive* choices, and reject parental requests for greater detail or concreteness beyond what the software allows. For example, in one meeting a school professional chairing an IEP meeting told the parent that, "Well, it's a menu; let's see if we can find anything. We are limited here … [one of the parent's suggestions] is not a choice in the drop down menu." *Id*. at 692. A parent may feel helpless in this situation. In contrast, an advocate may be more adept at technology and will know that technology is a useful resource, not a replacement for the nuanced collaboration that the IDEA requires.

Another factor is school professionals' sheer force of numbers. School districts bring many different professionals to IEP meetings, including the child's classroom teacher; teachers in any "pull-out" instruction that the child may receive due to her disability; a school psychologist; an occupational or physical therapist; the school principal; and the district's director of special education. A parent who faces such a phalanx of professionals is bound to feel overwhelmed.

Moreover, parents report that school district personnel sometimes fail to address parents with the respect and regard they deserve. In some cases, school district personnel address parents as "mom" or "dad," instead of using their names. Parents rightly perceive condescension in this mode of address, which often reduces parents to simmering silence. Burke, *Improving Parental Involvement: Training Special Education Advocates*, *supra*, at 227.

Courts and hearing officers have also found that school district personnel on occasion undermine the collaborative premise of the IEP process by making up their minds *before* the meeting and refusing to alter their position despite reasonable opposing arguments. *See E.H. v. Wissahockon Sch. Dist.*, 2020 U.S. Dist. Lexis 199469, at 7-8 (E.D. Pa. Oct. 27, 2020) (recounting that in a case involving a child with autism and hearing loss, an impartial hearing officer found that school district personnel agreed on a legally deficient IEP *before* meeting the

parent; over the parents' objections, the district's IEP placed the child in a needlessly restrictive environment for most of the school day and thus failed to meet the FAPE standard). School personnel are not necessarily more prone to the perils of group-think than any other group. But as imperfect human beings, they may on occasion march in lock-step away from a parent. An advocate can help a parent nudge school district personnel into a more genuinely collaborative mode. Indeed, advocates trained in developmental and curricular issues may be more collaborative than an attorney accustomed to practicing in a more adversarial key.

III. TRAINING FOR ADVOCATES IS WIDELY AVAILABLE AND FREQUENTLY USED

Comprehensive training for advocates is both widely available and broadly utilized. Under the IDEA, the U.S. Department of Education (DOE) funds parental training centers, including training for advocates for IEP meetings. *See* 20 U.S.C. § 1471(b) (noting that required activities for grantees include explaining mediation process under § 1415).

Advocacy groups and organizations for persons with disabilities also provide training. For example, the Council of Parent Attorneys and Advocates (COPAA), which regularly files *amicus curiae* briefs in appellate courts,[2] conducts robust training for advocates on the IDEA and educational concepts and methodologies. COPAA's Special Education Advocate Training (SEAT) is a phased three-part training regimen that includes a ten-week introductory program (SEAT 1.0), a year-long basic advocacy course (SEAT 2.0), and a five-week course (SEAT 3.0)

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[2] Recent COPAA amicus curiae briefs among scores filed in the last 15 years include the following:

1) *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), Brief of *Amici Curiae* Council of Parent Attorneys and Advocates, Children and Adults with Attention-Deficit/Hyperactivity Disorder, and the California Association for Parent-Child Advocacy in Support of Petitioner, https://cdn.ymaws.com/www.copaa.org/resource/collection/FC30F011-EAB6-44BE-9721-1F718DA268C1/15-827_tsac_Council_of_Parent_Attorneys_and_Advocates.pdf;

2) *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017), Brief of *Amicus Curiae* for the Council of Parent Attorneys and Advocates and Advocates for Children of New York in Support of Petitioners, https://cdn.ymaws.com/www.copaa.org/resource/collection/FC30F011-EAB6-44BE-9721-1F718DA268C1/15-497_tsac_Council_of_Parent_Attorneys.pdf;

3) *D.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 2020 U.S. App. Lexis 29624 (2d Cir. Sept. 17, 2020), Brief of *Amicus Curiae* Council of Parent Attorneys and Advocates, National Disability Rights Network and Disability Rights Connecticut in Support of Plaintiffs-Appellants, https://cdn.ymaws.com/www.copaa.org/resource/collection/FC30F011-EAB6-44BE-9721-1F718DA268C1/Ds_v_Trumbull_Brief.pdf; and,

4) *Sch. Dist of Phila. v. Kirsch*, 722 Fed. Appx. 215 (3d Cir. Feb. 5, 2018), Brief for *Amicus Curiae*, Council of Parent Attorneys and Advocates, https://cdn.ymaws.com/www.copaa.org/resource/collection/FC30F011-EAB6-44BE-9721-1F718DA268C1/Philadelphia__v_Kirsch_3rd.pdf.

on responsible business practices for advocates. *See* COPAA, *Training Options*, https://www.copaa.org/page/SEAT. COPAA also creates, staffs, and administers many continuing education programs, including regular webinars and an annual conference.

In addition, COPAA has issued a voluntary code of ethics for advocates that provides guidance. *See* COPAA, *Voluntary Code of Ethics for Advocates*, https://www.copaa.org/page/Adv_Code_Of_Ethics. The Code of Ethics requires that advocates complete twelve hours of continuing education annually. *Id*., I(4). In addition, advocates must complete a written agreement with each client before performing services, *id*., II(8); maintain client records and keep client information confidential, *id*., II(9, 10); expressly advise clients that an advocate-client privilege may not exist, *id*., II(11); "make[] full disclosure to every client … that he or she is not licensed to practice law and cannot give legal advice," *id*., II(3); disclose any and all conflicts of interest, *id.*, III(1); and refrain from "misleading others in the pursuit of a client's matter." *Id*., IV(1). One scholarly study has comprehensively analyzed COPAA's training regimen and praised its "rigor." Burke, *Improving Parental Involvement: Training Special Education Advocates*, *supra*, at 229 (also noting that "advocates wanted to complete the SEAT program to gain legitimacy as a professional").

The National Association for the Deaf (NAD) also conducts comprehensive training. *See* Holmes Hlibok, *supra*, at 15. Other forms of training that have been praised by scholars in the field exist in states and localities around the United States. Burke, *Improving Parental Involvement: Training Special Education Advocates*, *supra*, at 229-30 (describing the Volunteer Advocacy Project in Tennessee). In short, training is abundant and advocates take advantage of the many training programs that are available.

CONCLUSION

Advocates do not engage in the practice of law, even though their work occurs against the backdrop of the IDEA's legal framework and thus may overlap with certain tasks a lawyer might undertake. While that overlap with lawyers' work is incidental to the collaborative IEP process, advocates' help to parents in that federally mandated setting manifestly serves the public interest. In any case, the many opportunities for training that advocates regularly pursue as well as the voluntary ethics codes that many advocates subscribe to provide ample safeguards for the public.

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