



♥ Ensuring a Place at the Table for Every Family

To: New Jersey Committee on the Unauthorized Practice of Law
From: National Center for Parent Leadership, Advocacy, and Community Empowerment
Date: November 11, 2020
Re: Role of Non-Lawyer Advocates at IEP Meetings and Mediation Conferences

Comments of National PLACE

The National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE) is a national organization with 70 local, state and national family-led, family-serving non-profits including Parent Centers (Parent Training and Information Centers and Community Parent Resource Centers), Family to Family Health Information Centers and Family Voices Affiliate Organizations, National Federation of Families for Children's Mental Health State Organizations and local chapters, and Parent to Parent USA affiliates, among others. Our mission is to empower families and family-led organizations to advocate for enhanced, meaningful parent involvement and leadership in all decision-making that impacts services for children and families at all levels.

Many National PLACE members support families at IEP meetings and, to a lesser degree, mediation conferences. We are submitting these comments because of our belief that Opinion No. 56, should it stand, is a potential threat to the work that our members do across the country, because it may be used as the basis for similar action in other states.

National PLACE *strongly disagrees* that supporting parents at IEP meetings, including "speaking on behalf" of parents and children with disabilities at IEP meetings, is the practice of law. When our members accompany parents and youth/young adults to IEP meetings, their role is to support them to be able to participate effectively in the IEP meeting and to secure a quality IEP consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). We note that IDEA allows parents to include individuals with knowledge or special expertise as IEP team members and gives them the sole discretion to decide which individuals have the requisite knowledge or special expertise. School districts may not challenge this decision of the parents. Thus, we do not believe that IDEA allows the Committee to place any restrictions or requirements on this parental decision.

National PLACE's members are very familiar with how IEP meetings often operate, and how difficult it is for many parents to effectively advocate given how the deck is stacked against them. IEP meetings frequently feature one parent across the table from 4-5 or even more professionals often with advanced degrees, usually at the school, and most often during the day. There is a tremendous power imbalance at IEP meetings between parents and schools, exacerbated by additional barriers of language access, literacy, trauma, poverty, and racial/ethnic discrimination, among others. It is the experience of our members that having a non-attorney lay advocate accompany the parent(s) to the IEP meeting is critical to help reduce these power imbalances and help the parent(s) more effectively communicate with the professionals and develop a more appropriate IEP.

Because we do not believe that supporting parents at IEP meetings is practicing law, we do not think that the Committee's questions regarding the role of lay advocates at IEP meetings require responses. However, we will provide brief responses in case the New Jersey Supreme Court determines otherwise.

Question 1: Whether non-lawyer advocates should be permitted to represent, and speak on behalf of parents or children with disabilities at IEP meetings without the presence and/or participation of the parents or children?

National PLACE strongly supports allowing non-lawyer advocates to speak on behalf of parents or children with disabilities at IEP meetings. We are aware of no situations where non-lawyer advocates from our member organizations have attended IEP meetings without the presentation or participation of the parents or children.

The staff of many of our member organizations work with the parent(s) prior to the IEP meeting to help them prepare their agenda, priority issues, explanations for their underlying interests, parental concerns to include in the IEP, and other topics they wish to discuss. They practice with the parent(s) so that they feel more comfortable and confident speaking up on their own behalf. However, an IEP meeting can be extremely emotional for parent(s), whose children's lives and futures depend on the services in the IEP. Thus, there are times where staff or volunteers of our members might speak to help express the parent's concerns and requests, share knowledge about the child's strengths and needs as well as appropriate services, and model effective parent participation. The staff and volunteers of family-led organizations are there for emotional support, ensuring that families understand their options, and helping to ensure that the essential questions are asked. These activities are supportive and informational, not practicing law. This is not representation, but it is speaking on behalf of the parent(s), and it must be allowed to continue without fear that school district staff may decide to police IEP meetings to ensure that advocates do not "represent" or "speak for" parents. We note that there are other non-attorney professionals across the country who also attend meetings to develop IEPs, including staff of family organizations providing support within Children's Systems of Care (mental-behavioral health) and Centers for Independent Living, among others. Thus, the Opinion, should it stand, would have a far greater reach than just IEP meetings.

Question 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?

National PLACE strongly supports allowing non-lawyer advocates to speak on behalf of parents or children with disabilities at mediation conferences. Staff and volunteers from some of our members have attended mediations with parents to support them. Again, they are there for emotional support, ensuring that families understand their options, and helping to ensure that the essential questions are asked. They are not there to "practice law," but rather to help the parent(s) express their concerns and wishes. The school district representative at the mediation is knowledgeable about special education law and often has an advanced degree, in contrast to parents, many of whom lack even a high school degree. Further, districts often bring an attorney with them to a mediation even if the parent does not. The non-lawyer advocate supports the parent(s) in a difficult and often emotional situation, helping them express themselves and "speaking on their behalf" when needed. The staff and volunteers of our members usually engage in extensive planning and preparation with parents prior to the mediation, helping them organize their thoughts and practicing effective communication skills. If they "speak on behalf" of the parent(s), it is only because the parent is struggling with their communication, and always only to the extent needed while the parent gathers their thoughts or composure.

Question 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?

Question 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?

National PLACE reiterates its position that non-lawyer advocates who support parents at IEP meetings or in mediation proceedings are not engaged in the practice of law and thus, there should be no “safeguards” required when parents select non-lawyer advocates to accompany them to IEP meetings or mediations nor should there be any criteria established that non-lawyer advocates must meet in these situations.

Question 5: Is it in the public interest to permit non-lawyer advocates to engage in those activities that are considered, in Opinion 56, to be the practice of law?

We restate our opinion that having non-attorney advocates participate in IEP meetings and mediation conferences is *not* the practice of law. Regardless, SPAN strongly believes that it *is* in the public interest for parents to be able to use both nonprofit/no-cost and paid lay advocates to attend IEP meetings and mediations. There are more than 7 million students with IEPs across the US, and a substantial number are from low or moderate income families. There is an inadequate supply of attorneys knowledgeable about special education, especially who will provide their services at no or low cost. Further, having attorneys attend IEP meetings and mediations on behalf of families, which will only lead districts to bring their attorneys to IEP meetings and mediations, could lead to more adversarial and costly proceedings.

Many parents are able to effectively participate at IEP meetings on their own. Many National PLACE members provide parents and youth with the information and skills they need to do so. But for parents who face additional challenges – their own disability, limited English proficiency or low literacy, discrimination based on race, ethnicity, or immigrant status, poverty, trauma, and other barriers that interfere with a parent’s ability to advocate on their own behalf – non-attorney advocates are often the only difference between an inappropriate and an appropriate IEP, no future or a positive future, for their child with a disability.

Conclusion

National PLACE reiterates our position that supporting parent(s) or student(s) at IEP meetings or mediation conferences is not representation nor is it engaging in the practice of law, and thus, the New Jersey Supreme Court should not be establishing rules that interfere with the parent(s)’ rights in this regard.

Please contact Diana Autin, Executive Director of National PLACE, at dautin@parentsatthetable.org if you have any questions or would like to discuss our comments further.