



To: New Jersey Committee on the Unauthorized Practice of Law
From: SPAN Parent Advocacy Network (SPAN)
Date: November 11, 2020
Re: Role of Non-Lawyer Special Education Advocates/Consultants at IEP Meetings and Mediations

The SPAN Parent Advocacy Network (SPAN) is New Jersey's federally-designed Parent Training and Information Center (PTI), RSA Transition Parent Center, and Family to Family Health Information Center. SPAN also houses the New Jersey chapter/state affiliate for the National Federation of Families for Children's Mental Health, Family Voices, and Parent to Parent USA. In addition, SPAN is funded by the US Department of Education Office of Special Education and Rehabilitative Services to serve as the national Parent Center Technical Assistance (TA) Center (Center for Parent Information and resources) and national Transition Parent Center TA Center (RAISE), as well as the Regional Parent TA Center (NE-PACT) and Regional RSA Parent Center (REAL Transition Partners). SPAN has been New Jersey's PTI for over 32 years. In this capacity, SPAN provides information, training, and support to families of infants, toddlers, children, youth and young adults with disabilities, as well as to youth/young adults with disabilities themselves, and professionals in early intervention, special education, and transition to adult life. As part of the PTI, SPAN operates the Military Family 360 Support project on Joint Base McGuire-Dix-Lakehurst, providing support to military-connected families around the state.

The vision of SPAN is that all families will have the resources and support they need to ensure that their children become fully participating and contributing members of our communities and society. *Our mission* is to empower and support families and inform and involve professionals interested in the healthy development and education of children and youth. *Our foremost commitment* is to children and families with the greatest need due to disability or special health/mental health needs; poverty; discrimination based on race/ethnicity, gender, language, immigrant or homeless status; involvement in the child welfare or juvenile justice systems; geographic location; or other special circumstances. *Our motto* is Empowered Parents: Educated, Engaged, Effective!

SPAN encourages parents to empower themselves by becoming educated in order to effectively advocate for their own children and family. Toward this end, SPAN offers individualized assistance, workshops, printed materials, a resource-rich website, three regional mini-conferences/year, and a bi-annual parent leadership conference. Every parent, regardless of how many times they contact us, or their service choice(s), is provided with the following information:

- a. Their rights, and the rights of their child(ren), under the relevant education, health, child welfare, human services, labor, or other laws;
- b. If relevant, any research-based best practices that might assist the parent in making their decision (i.e., for a child with challenging behavior, the research demonstrates conclusively that positive behavior support is a more effective strategy than aversives, restraint or seclusion);
- c. How to navigate the relevant system (including how to go up the chain of command); and
- d. Other relevant resources, including if requested, our list of free and fee-for-service advocates and attorneys as well as resources from national centers funded by the US Department of Education, US Department of Health and Human Services, US Department of Labor, etc.

For over 30 years, SPAN has facilitated the six-part SPAN Resource Parent (SRP) training series. Its purpose is to prepare families of children with disabilities and special healthcare needs to support other parents in their communities, including at IEP meetings. Participants must provide 60 hours of volunteer time following the training; one of the volunteer options is accompanying parents to IEP meetings. SPAN staff on the PTI, as well as other projects such as Family WRAP (funded by the New Jersey Department of Health), have accompanied parents, including military-connected parents, to IEP meetings, mediations, and even emergent relief sessions, to support them to advocate in these forums on behalf of their child. The Family WRAP project *requires* SPAN Family Resource Specialists (FRSs) to attend IEP meetings with families at the request of the County Special Child Health Services Case Management Unit.

Four years ago, the NJ Council on Developmental Disabilities, responding to the need identified in their statewide needs assessment, issued a Request for Proposals aimed at increasing the availability of IEP meeting support, particularly around the issues of inclusion/least restrictive environment and transition to adult life, and especially for families facing the greatest challenges to securing appropriate IEPs for their children. With this funding, SPAN established its SEVA (Special Education Volunteer Advocates) project. SEVA provides an additional 3 days of training for SRP graduates focused specifically on the knowledge and skills needed to support parents around the development and implementation of IEPs. In the past 4 years alone, SPAN has trained over 215 parents of children with disabilities to provide support to families in over 485 IEP meetings, and provided information to over 22,700 parents to advocate on their own behalf at IEP meetings. This project has been extremely successful, with over 95% of cases resulting in agreement between parents and professionals at the IEP level without resort to formal dispute resolution processes. This project is now funded by the New Jersey Department of Education Office of Special Education Programs as part of the dispute resolution components of the START (Statewide Technical Assistance and Resources Team) project. The two other dispute resolution components include providing Creating Agreement workshops for families and professionals in districts with high levels of due process hearings, and meeting with parents who have requested due process to discuss the benefits of mediation. All three components are aimed at increasing the likelihood of reaching agreement at IEP meetings, reducing the need for formal dispute resolution processes, and encouraging the use of the least adversarial processes such as mediation.

SPAN is also funded by the New Jersey Bar Foundation to provide training and support around IEPs for families of children with disabilities in the child welfare and juvenile justice systems. SPAN was previously funded by the New Jersey Bar Foundation to provide intensive support, including at IEP meetings and mediations, for families of and youth/young adults with disabilities around transition. SPAN was also previously funded by the Mercer County Youth Services Commission to provide intensive support, including at IEP meetings and mediations, for families of and youth with disabilities transitioning out of the juvenile justice system back into their communities.

SPAN now has 65 staff, over 400 SRPs, and over 200 SEVAs, many of whom with experience providing support to families at IEP meetings and some at mediations and even emergent relief hearings.

While SPAN does not means-test families for support at IEP meetings or mediations¹, we prioritize individuals with low and/or moderate income, as well as parents with disabilities, parents with limited English proficiency or low literacy, families facing racial, ethnic, and/or immigrant discrimination, highly

¹ In our New Jersey Bar Foundation transition project, we served families with incomes at or below 200% of the Federal Poverty Level.

mobile or transient families, and other families with limited resources and capacity to advocate on their own.

For the past 25 years, one of SPAN's Executive Co-Directors, Diana Autin, has been an attorney who formerly served as the Managing Attorney at Advocates for Children, a PTI in New York City. Over the years, SPAN has also housed other attorneys. Currently there is one other attorney on SPAN's staff. However, SPAN does not *represent* parents.

It is from this long history, our experience, and our expertise in supporting parents to secure effective, quality IEPs, including via participation in IEP meetings, mediations, and emergent relief hearings, that we submit these comments in response to the Committee's questions.

Overarching Comments

SPAN expresses its strong concerns about how this Opinion was issued. The Committee issued Opinion No. 56 after a confidential grievance was filed by an unknown party about a non-lawyer representing students in special education proceedings before the Office of Administrative Law (OAL). The Committee then used the grievance to examine non-lawyer practices not only at OAL, but also at IEP meetings and mediation conferences. SPAN is very concerned about the issuance of this wide-ranging Opinion that impacts IEP meetings and mediations which were not at issue in the underlying complaint.

SPAN strongly believes that supporting parents at IEP meetings, including "speaking on behalf" of parents and children with disabilities at IEP meetings, is not the practice of law. Rather, this is assisting parent(s) and/or youth/young adults with disabilities of transition age to effectively participate in the meeting to secure the development of a quality IEP consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). Although a finalized IEP is enforceable against the district via a state complaint and/or due process hearing, the meeting to create the IEP is *not* a legal proceeding. Further, the IDEA explicitly allows parents to include individuals with knowledge or special expertise regarding their children as members of the IEP team and the discretion to decide which individuals have the requisite knowledge or expertise. When parents bring SPAN staff, SRPs or SEVAs with them to their IEP meeting, they do so because they have made the determination that the SPAN staff, SRP, or SEVA, has knowledge or special expertise that can help them participate more effectively and help the team come to mutual agreement. IDEA does not allow schools, districts, or anyone else, to challenge that decision by the parent(s). Further, SPAN staff, SRPs, and SEVAs do not attend IEP meetings without the presence or participation of the parent(s) since our goal is to support the parent(s) and help them advocate on their own behalf.

The Committee's Opinion reflects either a lack of understanding of, or disregard for, the reality that IEP meetings can be intimidating and overwhelming, especially, but not exclusively, for parents with limited literacy or English language skills, disabilities, or other barriers to effective communication and advocacy. This Opinion also demonstrates a disconcerting lack of understanding of the power imbalance at IEP meetings between parents and schools, and the important role that peers and lay advocates play in leveling the playing field and enabling children with disabilities to receive the free, appropriate public education that IDEA guarantees and ensuring that their rights are protected throughout the special education process. This role is especially critical given the severe shortage of free and low-cost legal services available to parents of children with disabilities, particularly at the IEP development level. It is also true that parents are often concerned that bringing an attorney will make an IEP meeting more adversarial, especially since the district almost universally brings an attorney if a parent does. The law

appropriately requires that a team from the district be present at IEP meetings, including the case manager, special education teacher, general education teacher, and district representative who is authorized to make commitments on behalf of the district. This means that, at most IEP meetings, there are at least 4-5 professionals and only one parent. (One of the reasons this occurs is that, despite the requirement that IEP meetings take place at mutually convenient times and locations, most IEP meetings are scheduled during the work day so that at most one parent can attend, and that parent must take time off from work to attend.)

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, should the New Jersey Supreme Court decide differently, we will provide responses.

Questions

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?

SPAN 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 have attended IEP meetings without the presentation or participation of the parents or children. SPAN would not attend an IEP meeting without the participation of the parent(s). SPAN staff, SRPs, and SEVAs 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. We 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 a SPAN staff, SRP, or SEVA 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. 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.

There are other non-attorney professionals in New Jersey who also attend meetings to develop IEPs, including case managers at the County Special Child Health Services Case Management Units (funded by the New Jersey Department of Health in part with funding from the US Department of Health and Human Services Maternal and Child Health Bureau Title V program); parent staff of the county Family Support Organizations (funded by the New Jersey Department of Children and Families Children's System of Care; their support for parents at IEP meetings is part of their contract with the state); and even staff of the county Care Management Organizations (also funded by the New Jersey Department of Children and Families). Non-attorney professionals also attend meetings to develop other plans, for example, staff of the county Centers for Independent Living who may attend meetings to develop Individualized Employment Plans for adults with disabilities. There are literally hundreds of non-attorney professionals who support children, youth/young adults, and adults with disabilities and their families at meetings to develop appropriate plans. This Opinion, if allowed to stand, would have a far greater reach and be far more disruptive than merely impacting 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?

SPAN strongly supports allowing non-lawyer advocates to speak on behalf of parents or children with disabilities at mediation conferences. SPAN staff and SRPs have attended mediations with parents to support them. 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. SPAN staff and SRPs 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?

SPAN reiterates our 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. There are already established criteria for non-lawyer advocates who represent parents in due process hearings and thus no additional criteria are needed.

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 240,000 students with IEPs in New Jersey, and a substantial number are from low or moderate income families. As stated earlier, 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, unnecessarily “ramps up” the potential for adversarial meetings² and the cost to both parents and districts/taxpayers.

As noted earlier, school districts are required to have an administrator at IEP meetings and at mediations, and they also have teachers and other professionals at IEP meetings as well as often at

² SPAN is not saying that parent attorneys are necessarily adversarial, merely that inserting attorneys into non-legal processes such as IEP meetings raises the potential for more adversarial meetings.

mediations. Prior to a mediation, and to an IEP meeting that has the potential for disagreement or conflict, administrators have the ability to consult with their district’s lawyer. Parents need to be able to access lay advocates for a fair opportunity to have meaningful conversations with school officials about their children’s strengths and needs, goals and objectives, services and placement, and expectations of performance. Many parents are able to effectively participate at IEP meetings on their own; SPAN provides thousands of parents with the information and skills they need to do so every year. 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

SPAN supports the current situation regarding the ability of non-attorney advocates to participate in *due process hearings* in special education cases. We note that the IDEA provides that any party to the due process hearing has “the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.” 20 USC 1415(h)(1), and that the New Jersey Supreme Court recognizes the role of non-lawyers in Court Rule 1:21-1(f) which provides that a non-lawyer may appear in a contested case before the Office of Administrative Law “to represent parents or children in special education proceedings, provided the non-attorney has knowledge or training with respect to handicapped [sic] pupils and their educational needs so as to enable the non-attorney to facilitate the presentation of the claims or defenses of the parent or child.” R.1:21-1(f)(8). However, 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 reach out to Diana Autin, Executive Director, at diana.autin@spanadvocacy.org, with any questions or to discuss our comments in further detail.

Vignette of a Family Supported by a Special Education Volunteer Advocate at an IEP Meeting

The parent was looking for a parent advocate to support her at her IEP meeting. The parent had a 7-year old son who is diagnosed with Autism and currently in an inclusive placement in second grade. The academic demands that have exponentially increased have negatively impacted the child and resulted in significant emotional distress which included melt-downs at home and being unable to complete his assignments, which was placing him at risk of a more segregated placement.

The parent wanted to ensure the child had the individualized supports to maintain his current inclusive placement. She was matched with a Special Education Volunteer Advocate – SEVA - to provide her peer support. The SEVA met with the parent to gather the information and help develop a support plan for her upcoming IEP meeting.

The SEVA provided the parent with tools to support her requests which included Functional Behavioral Assessment and Positive Behavioral Support information as well as the components of the New Jersey Administrative Code (NJAC) that supported her request for an aide. After meeting with the SEVA, the parent was able to develop a well written letter to the Child Study Team (CST) addressing her concerns and expressing what she was looking to accomplish at the IEP meeting. The parent was able to provide the CST with specific and measurable goals to keep her son on task and exactly how the aide could be a benefit to her son. Through the support of a SEVA, the CST agreed to provide the assessments and additional supports and have another IEP meeting to discuss their findings. Most importantly, the parent was able to establish a new collaborative relationship with her CST which will benefit her child moving forward into the future.

The parent reported, "I felt that everything was a fight to keep my son in an inclusion setting. He was at risk again to lose the placement. I know I couldn't face the district alone but through the help of the SEVA project everything changed. The child study team understood and validated my concerns, it was the first time we came together. The SEVA gave me really good tools and it all made sense. I learned the power of advocacy. Thank you SEVA. "

Evaluation Results of SEVA Support

87.5% of families reported that the assistance was helpful, and that their SEVA volunteer prepared them to communicate their concerns during the IEP meeting. Over 75% reported that the SEVA support improved the IEP outcomes, and that their knowledge and confidence to participate in the IEP process increased. Key components included helping parents communicate their needs during the IEP meeting; explaining/helping parents understand important IEP-related concepts and processes; providing useful resources; and providing supportive and knowledgeable assistance. Specific parent quotes included:

“There were times I didn’t understand what they were telling me, and my SEVA helped me understand the terms they used, and she helped me with the language of the IEP and how to express myself. She explained some of the rights to me that I wasn’t sure about.”

“My SEVA explained to me all the things that were going to be brought up in the meeting that I would have never known about!”

“My SEVA assisted me and she prepared me for the questions they would ask and prepared a timeline with things my son accomplished.”

“My SEVA person was more than helpful, she is very knowledgeable, patient, and kind. That’s the reason I’m requesting her for my next meeting with the school board and a representative from the Division for Vocational Rehabilitation as soon as I receive a date.”

“Our SEVA was very prompt in answering our calls and gave us a lot of resources to use and read. Used their help to craft a letter for the IEP and to keep our child in general education.”

“The reason we reached out to SPAN was because we didn’t have all the answers, and they made me feel like I wasn’t crazy and they answered so many questions! So refreshing!”

“Before we had the meeting with the advocate, they were not really listening to us, and were trying to give us something that wasn’t a good fit for our child, and with the advocate, she could advise us on how to decipher the IEP and to get the most beneficial services.”

“I felt better prepared. The volunteer was knowledgeable and gave me resources I was unaware existed.”

“Made me more confident and I felt supported.”

“The SEVA volunteer was an invaluable source of information and counsel. She listened attentively...and kept me abreast of my parental rights.”

“Just having a SEVA volunteer sitting next to me was a big boost of confidence to express and ask for the things that my son needs...I knew that in case I’d miss something, she will jump in.”

“This was the first time that I’ve worked with a SEVA volunteer and it was a great experience. The general information, the resources and the attitude that the SEVA volunteer had during our three meeting was useful and help me improve my own self-advocate skills. Please keep this program going for the future.”