



What services non-attorney advocates can legally provide in New Jersey An analysis of the New Jersey Supreme Court’s “Opinion 57”

By Jon Gottlieb, Esq.
Autism New Jersey Director of Information Services
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In a recent opinion, titled “[Opinion 57](#),” the New Jersey Supreme Court’s Committee on the Unauthorized Practice of Law affirmed that educational advocates could represent parents at IEP meetings and mediation.

This is a softening of the Committee’s position, after a previous opinion – “Opinion 56” – made it more difficult for non-attorney advocates to advise special education students’ parents. [Opinion 56 was suspended after it sparked widespread opposition in the state’s special needs community.](#)

The following table outlines what services a non-attorney can legally offer, based on Opinion 57.

CAN A NON-ATTORNEY ADVOCATE...?	
Appear at an IEP meeting and speak on behalf of parents?	Yes
Attend an IEP meeting if a parent or guardian is not present?	Yes, with explicit parent authorization and consent
Appear at a mediation proceeding and speak on behalf of parents/guardians and children?	Yes, but only if the parent/guardian is present
Appear at a mediation if the parent/guardian is not present?	No
Advise parents regarding educational problems, assess educational placements, and produce technical reports?	Yes*
Serve as an expert witness?	Yes*
Appear in a contested case before the Office of Administrative Law (Impartial Hearing)?	Yes, but only if they (1) are qualified, (2) do so for free and (3) file a notice of appearance with the court
Sign a consent order?	No
Sign a stipulation of settlement?	No

NOTE: Non-Attorney advocates can only charge fees for activities designated with an asterisk (“”)*

Participation in Due Process Hearings

Non-lawyer advocates' participation in [due process hearings](#) is fairly settled. It is contemplated by federal law in [20 U.S.C. §1415\(h\)\(1\)](#) and recognized by the New Jersey Supreme Court, as long as certain rules and restrictions are in place. At a hearing before the Office of Administrative Law, a non-lawyer advocate may appear in a contested case, provided they have sufficient knowledge or training with respect to students with disabilities to present the parent or child's claims. That non-attorney advocate must serve all parties to the case with a signed Notice of Appearance/Application (NOA), which:

1. Explains how they have knowledge or training with respect to students with disabilities 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, and
2. Certifies that he or she is not receiving a fee for the appearance.

With that NOA filed, the non-attorney advocate can present evidence, speak for their client, make oral arguments, and conduct direct- and cross-examination of witnesses. However, under no circumstances can a non-lawyer advocate sign a consent order or stipulation for a party.

With all these conditions met, the non-lawyer advocate can appear at a due process hearing without violating the Committee's rules. However, if the advocate fails to submit the NOA or accepts a fee for their advocacy during the hearing, it would be considered the unauthorized practice of law and is forbidden by the Committee.

Participation in IEP Meetings and Mediation Proceedings

Opinion 57, published on April 9, 2021, steps in to explain whether and to what extent an advocate could represent parents at earlier stages in the special education dispute resolution process – specifically during IEP meetings and mediation proceedings.

The Committee's opinion held firm in determining that participation in an IEP meeting and advocacy during the mediation process both constitute the practice of law, but that's only the first half of the Committee's analysis. Their logic is that an IEP is a binding document and IEP meetings, the rights of parents and children, and the obligations of the school district are all governed by statute. Moreover, the Committee has repeatedly prohibited non-lawyers from representing parties in mediation proceedings in other contexts.

However, the Committee determined that it would not serve the public interest to prevent non-attorney advocates from practicing law in this way. The committee acknowledged the fact that, at IEP meetings and mediation proceedings, parents are often intimidated. They can be bombarded by educational jargon and confused by the specific educational standards that school districts must meet. In contrast, the school district often has many professionals of their own present at IEP meetings. As a result, parents – some of whom may speak English as a second language or have learning differences of their own – are often at a distinct disadvantage.

Opinion 57 acknowledges that the alternative to having an advocate present is to hire a lawyer, which can be cost prohibitive for many parents. And, though pro-bono lawyers operate in this field, demand often far outstrips supply. In light of this, the Committee determined that – even though the participation of non-lawyer advocates in IEP meetings and mediation proceedings constitutes the practice of law – it does not constitute the unauthorized practice of law.

No Licensure Requirement for Non-Attorney Advocates

The Committee declined to impose a licensure requirement on special education advocates. There is currently no governmental licensing or certification program, and many advocates are self-taught. The Committee stated that imposing such a requirement may pose problems for low-income parents, especially when weighed against the relatively low chance that an unskilled and unlicensed advocate could inflict demonstrable harm.

While the Opinion encourages the State Department of Education to initiate a licensing or certification program, it does not mandate licensure for non-attorney advocates.

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If you are a parent looking for an advocate, visit [How to Find a Special Education Advocate That's Right for You](#).

If you are a parent or a professional seeking legal advice, you can also use our [online referral database](#) to find a lawyer.

Note: Jon Gottlieb is an attorney barred in New York State. This article is intended for educational purposes only. It does not constitute legal advice and should not be relied upon or used to guide prospective conduct. If you have a legal question about your specific situation, please contact an attorney directly.



800.4.AUTISM



www.autismnj.org



information@autismnj.org