



## Unauthorized Practice of Law and Parent Centers Dialogue Guide

### ***Overview of the Unauthorized Practice of Law***

In every state, non-lawyers are prohibited from “practicing law.” Non-lawyers who “practice law” are guilty of the “unauthorized practice of law.” Every state has its own laws, regulations, and rules regarding the definition of “unauthorized practice of law.” Unauthorized practice of law (UPL) rules generally prohibit non-lawyers from giving out-of-court legal advice, or helping people prepare legal documents (except where no legal advice is given). The American Bar Association Model Codes Ethical Considerations 3-5 notes that “The practice of law relates to the rendition of services to others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to the specific legal problem of a client.” UPL statutes generally prohibit three types of activities: (a) representing another in a judicial or administrative proceeding, (b) preparing legal instruments or documents which affect the legal rights of another, and (c) advising another of their legal rights and responsibilities.

Individual state prohibitions against non-lawyers practicing law must be implemented consistently with the specific provisions of the Individuals with Disabilities Education Act that provide for the existence and responsibilities of Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) as well as its provisions allowing parents to be accompanied and advised by individuals with special knowledge and training regarding children with disabilities at IEP meetings and due process hearings (615)(h)(1) (Regulations 300.512). However, the IDEA is silent about whether or not non-lawyers may *represent* families in due process hearings or other proceedings.

IDEA requires parent centers to provide training and information to parents that, in part, helps parents participate in decision-making processes and the development of IEPs and IFSPs; understand the provisions of IDEA for the education of, and the provision of EI services to, children with disabilities; resolve disputes in the most expeditious and effective way possible, including encouraging the use of, and explaining the benefits of, alternative methods of dispute resolution such as the mediation process; understand their rights and responsibilities under IDEA upon the student reaching the age of majority; understand the availability of, and how to effectively use, procedural safeguards including the resolution session; and understand, prepare for, and participate in, the resolution session. Federal law overrides state law and thus any state law that would prohibit a parent center staffer from engaging in any of the above activities would be null and void.



Whether or not a parent center staffer is violating rules regarding UPL is potentially a complicated issue involving questions about whether or not an action is a “judicial or administrative proceeding,” a document is a “legal instrument or document,” and whether their advice to a parent falls under the obligations of a parent center under IDEA or is prohibited advice pursuant to UPL rules. It also involves their individual state UPL rules as well as the procedures set forth by their state early intervention and special education due process rules. For example, in some states (such as New Jersey), a non-lawyer can register as a lay advocate using forms provided by the Department of Education.

### ***Implications for Parent Center Practice***

In order to ensure that parent center staff do not inadvertently violate state UPL rules, the following are recommended approaches and language for parent center staff to use when communicating/speaking/meeting with families.

*Telephone Conversations:* The following statement can be made to clarify the role of a parent center staff person related to a phone conversation with a family (thanks to Wisconsin FACETS for this language):

“I am not an attorney, and Parent Center is not a law firm or legal services agency. This means that I cannot give you any legal advice. I cannot legally represent you or make any decisions for you about your child. What I can do is provide information and support to you. I can help you learn about your rights and the various procedures that exist to help you make decisions about and advocate for your child. I can brainstorm with you to come up with different options. If you select a particular option, I can help you understand how to use that option, such as timelines, forms to file, etc. If you need or want legal representation, I can give you our contact list of attorneys and lay advocates who are registered with the Office of Administrative Law, who may be able to help you.”

Parent center staff should *never* say, “You have to take this action,” or “You must take this step.” (This is important not just related to UPL, but also because the parent center’s role is not to substitute our judgment for that of the parent or youth, but rather to ensure that they understand their rights and responsibilities, the processes, and the research/best practices so that they can make their own educated decisions.)



*IEP-IFSP Meeting/Resolution Session/Mediation/Due Process Hearing:*  
The following statement can be made to clarify the role of a parent center staff person related to a meeting with a family (thanks to Wisconsin FACETS for this language):

“My name is \_\_\_\_\_, and I am from Parent Center. Parent Center is a parent center funded by the US Department of Education to provide information, training, and support to families of children with disabilities, including regarding [IEP-IFSP meetings] [resolution sessions] [mediation] [due process hearings.] My role here today is to serve as Parent’s advocate/support. I am not an attorney. I am here to support the family, which may include such things as informing them of their rights and options and helping them brainstorm ideas and solutions. “

In such a meeting, it is important that the parent center staffer not say, “Don’t accept that offer,” or “Don’t agree to that.” Rather, a parent center staffer might say, “Before agreeing to that offer, you might want to ask these questions, or consider what will happen if you agree.” Telling a parent what to do, or not to do, is more likely to be interpreted as giving legal advice, while suggesting that a parent get more information or consider the implications of a decision before making the decision is not likely to be interpreted as giving legal advice.

*Request for Complaint Investigation:* IDEA is clear that any person may file a request for complaint investigation when they believe that IDEA is being violated. Thus, parent center staff may file requests for complaint investigation with their State Department of Education.

**Conclusion**

It is imperative that parent center staff who provide training, information, and support to families understand the difference between their role under IDEA and state UPL rules.

**Dialogue Starter**

**Reaction Questions**

1. In your experience, what is hardest about avoiding the unauthorized practice of law?
2. In your experience, when are you most likely to fall into actions or statements that might be interpreted as the unauthorized practice of law?
3. What types of questions do parents ask that solicit responses that could be interpreted as the unauthorized practice of law?



### ***Application Questions***

1. What procedures should be in place to ensure that you and other parent center staff do not inadvertently engage in unauthorized practice of law?
2. What specific training do new staff need on avoiding unauthorized practice of law? Current staff?
3. What kind of supervision would be most helpful to staff?
4. What other thoughts do you have about how to ensure that you and other parent center staff do not engage in unauthorized practice of law?
5. What questions do you still have about the unauthorized practice of law? What would be most helpful to you in getting those questions answered?