



Written Provision of Individualized Assistance



Introduction

NE-PACT/Region 1 Parent TA Center supplement to develop a toolkit for parent centers on written individualized assistance to families:

- Conducted a survey of parent center policies & practices
- Reviewed potential issues with providing written individualized assistance
- Developing a toolkit including:
 - Powerpoint
 - Dialogue guides
 - Sample policies



Context

93% of Parent Centers provide written individualized assistance to families:

- 86% by email
- 50% by letter
- 34% via text
- 33% via Facebook
- 12.5% via Twitter, private messages, listserves



Types of Written TA

- Referring a family to sites where they can find information materials responsive to their request
- Sending informational materials (FAQs, fact sheets, other publications) responsive to the parent's request
- Sending a description of a telephone conversation including a summary of the parent's issues, the individualized assistance provided, and other relevant materials
- Sending a detailed, individualized response to a parent's request for information/assistance



Issues to Consider



Potential Liabilities



Individualized assistance provided in writing may:

- Be inaccurate
- Give rise to litigation
- Be subject to subpoena
- Be beyond the scope of a Parent Center's mandate under IDEA
- Subject a staff member or the Parent Center itself to a charge of Unauthorized Practice of Law.



Important considerations

Staff prepared writings may display the bias of the person who called, misstate material information, and omit information that is part of the “larger picture” that was not provided to the Parent Center staff. If the document restating these details is provided to the parent as part of TA, the parent may rely on and distribute a document containing inaccurate, biased, and incomplete information, as well as “advice” outside the scope of the Parent Center’s authority.



Litigation considerations



- Written communication is subject to discovery:
 - Litigation between parents
 - Actions against parents by child welfare systems, school districts, or other government agencies
 - Complaint by a parent against the parent center
 - Litigation brought by a State Bar Association against a parent center for unauthorized practice of law



Litigation between parents



- In cases of separation or divorce, the issue of services for their child(ren) with disabilities may be a point of contention
- One or both parents may want to use correspondence (email or letters) from the parent center to justify their position
- Either parent may legally subpoena such correspondence



Litigation against a parent center

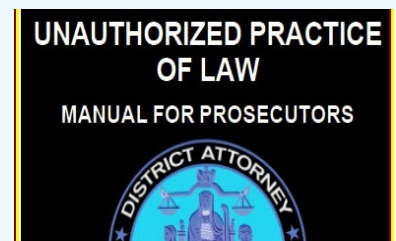
- If a parent disagrees with the information provided to them by a parent center, they may sue the parent center
- The parent may use written correspondence as evidence of inappropriate or inaccurate information (or advice)





Unauthorized practice of law

- When a State Bar Association (or Prosecutor!) wants to charge a parent center with the unauthorized practice of law (UPL), they may legally subpoena and use written correspondence (email or letters) from the parent center to parents as evidence of UPL
- UPL issues are *not* restricted to written communication but also include statements made at meetings, on the phone, etc!





What is “unauthorized practice of law?”

- State Bar Association rules & State laws prohibit anyone from practicing law without a license
- Practicing law without a license is the unauthorized practice of law
- UPL rules generally prohibit:
 - Non-lawyers from giving out-of-court legal advice
 - Helping people prepare legal documents (except where no legal advice is given)





ABA Model Code of Ethics



- ▶ “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.” ABA Model Codes Ethical Considerations 3-5



UPL Statutes

- UPL statutes generally prohibit:
 - Representing another in a judicial or administrative proceeding
 - Preparing legal instruments or documents which affect the legal rights of another
 - Advising another of their legal rights & responsibilities





Intersection of UPL & IDEA

- Individual state prohibitions against non-lawyers practicing law must be implemented consistently with IDEA:
 - Existence of PTIs & CPRCs with the responsibility to inform families of the provisions of IDEA, ADA, 504, etc.
 - Provisions allowing parents to be accompanied & advised at IEP meetings & due process hearings by individuals with special knowledge & training regarding children with disabilities (615)(h)(1); Regs. 300.512
 - IDEA is silent about whether or not non-lawyers may *represent* families in due process or other proceedings

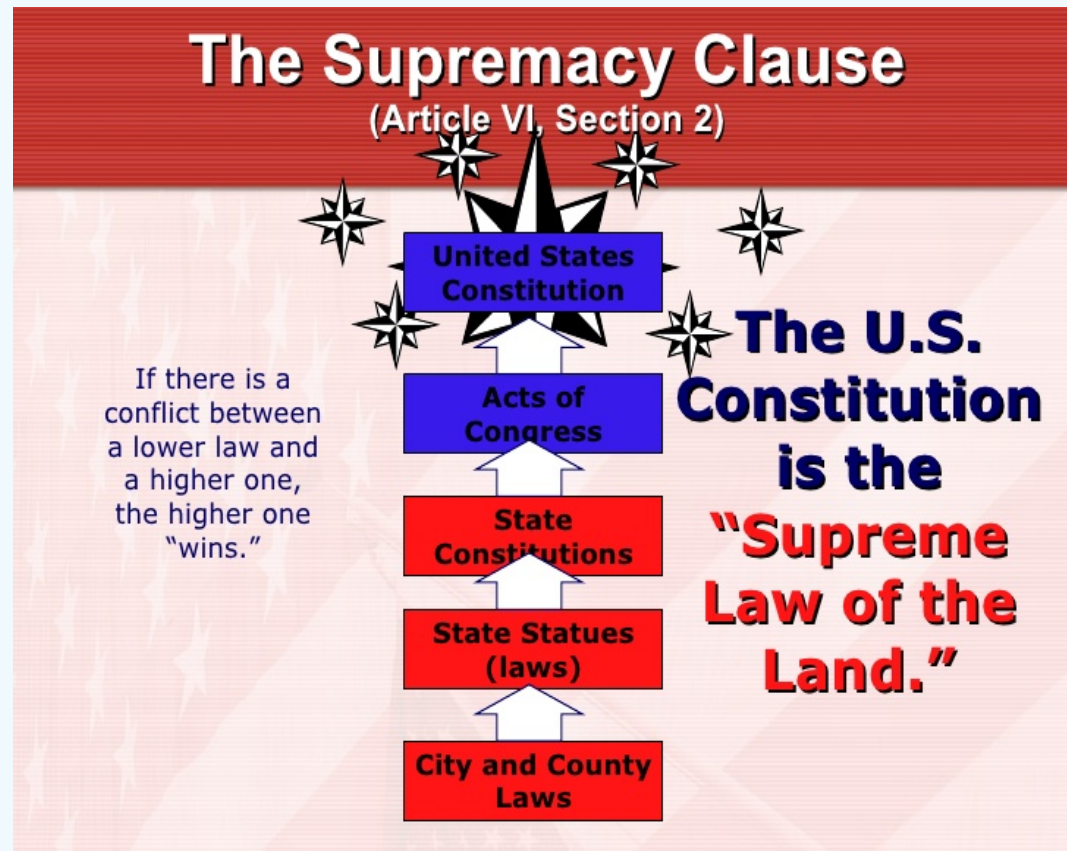


Parent Center Roles

- Provide training & information to help parents:
 - Participate in decision-making processes & development of IFSPs and IEPs
 - Understand the provision of IDEA for the education of, & provision of EI services to, children with disabilities
 - Resolve disputes in the most expeditious & effective way possible including encouraging use & explaining the benefits of alternative DR methods
 - Understand rights & responsibilities upon student reaching the age of majority
 - Understand the availability of & how to use procedural safeguards
 - Understand, prepare for, & participate in, the resolution session



Federal law overrides state law!





Is it unauthorized practice of law?

- Must answer these questions:
 - Is an action a judicial or administrative proceeding?
 - Is a document a legal instrument or document?
 - Is the information provided to the parent consistent with the obligations of a parent center under IDEA or is it prohibited “advice” pursuant to UPL rules?
 - What are the specific state UPL rules?
 - Are there specific provisions for registering as a lay advocate under state EI or special education rules?



Is it appropriate assistance?

- What is the content of the TA response?
 - Do your Center's staff provide a detailed written response repeating facts set forth in person's query?
 - Do your Center's staff suggest or tell the questioner what actions are to be taken?
 - Does the TA provider substitute his/her view or opinion for the parent's?
- What is the **tone** of the TA response?
 - Does the TA provider profess to be an "advocate" or imply expertise in light of his/her experience?
 - Does the TA provider encourage the questioner to rely on the "advice" provided by the Parent Center?
 - Does the TA provider discourage the parent or youth from contacting an attorney or non-attorney advocate for advice about his/her rights?



Addressing the Challenges



Addressing the challenges: Quality Assurance



- Parent Center policies should include:
 - Initial & ongoing training to staff & volunteers regarding the implications of providing written assistance to families, the policy re: written assistance, & who is in charge of quality assurance
 - How to write tailored information narrowly, accurately, and consistently with the policy
 - How written assistance will be reviewed on an ongoing basis to ensure that it is accurate, up-to-date, & consistent with the policy
 - Who will review written assistance & how often
 - How the plan will be monitored & updated as needed



Contact Management System:

- Routine periodic review of individualized assistance in CMS by supervisor
- Contents of CMS notes
 - Areas of inquiry
 - Appropriate but limited information about the scope of prior inquiries & assistance given
 - Avoid overly detailed recordkeeping about each contact, every detail of the circumstances described by the parent, or specific detailed descriptions of the individualized information provided



Training: Supervised brainstorming scenarios with staff - may utilize actual inquiries received by the Parent Center and/or scenarios developed for instructional purposes

Development of a resource “library” or “toolkit” addressing a variety of TA issues commonly raised in your community (research-based reading programs, RTI v. special education evaluation, disciplinary practices, translation of materials into variety of languages, etc.)

Frequent “check-ins” with individual TA staff members to address questions, need for mentoring and additional training



Addressing the Challenges: Litigation

- Ensure the policy statement prohibits:
 - Giving “advice” that could be interpreted by parents who are in disagreement with each other as favoring one parent over the other
 - Making statements that could be used by government agencies (districts, child welfare, etc.) seeking to prove child abuse or educational neglect
 - Communicating with parents (or professionals) in ways that are inaccurate, out-of-date, disrespectful, demeaning, etc.



Addressing the Challenges: Unauthorized Practice of Law

- Implement a policy & training that explicitly:
 - *Prohibits* the use of language such as, “You have to take this action,” or “You must take this step.”
 - *Requires* the use of language that makes it clear to the parent that parent center staff:
 - *Are not* in the role of attorneys & do not “represent” the parent
 - *Are* here to support the family which may include informing them of rights & options, & helping brainstorm ideas & solutions



Written Assistance Dialogue Guide Reaction Questions

- In your experience, when is it appropriate to provide written individualized assistance? When is it inappropriate?
- What are the benefits of providing written individualized assistance?
- Are there any drawbacks to providing written individualized assistance? If so, what are they?
- Based on your parent center's evaluation data, is written individualized assistance having the positive outcomes you want



UPL Dialogue Guide Reaction Questions

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



Written Assistance Scenario #1

- A parent who doesn't speak English and who has limited literacy asks for your help in filing a request for complaint investigation against her district for classifying her child even though she believes that the reason her child is struggling is that he hasn't been provided with instruction in his language. You fill out the request for her, send it to her with instructions, and inform her of how to submit the request and to whom.
 - What potential issues does this example of written individualized assistance raise?
 - Is this an example of appropriate written individualized assistance? Why or why not?
 - What organizational procedures or safeguards should be in place in this situation?



Written Assistance Scenario #2

- You speak to a parent on the phone about her child's suspension. You send her a follow-up email with a summary of your discussion, including your recommendations for next steps, along with your center's discipline guide and information on how to file a request for mediation or a due process hearing.
 - What potential issues does this example of written individualized assistance raise?
 - Is this an example of appropriate written individualized assistance? Why or why not?
 - What organizational procedures or safeguards should be in place in this situation?



Written Assistance Scenario #3

- A parent emails or texts your center with a series of questions about various actions that the early intervention system has taken including regarding the evaluation, timelines, IFSP development and implementation, and EI co-pays. You email or text the parent back with information about each EI violation and what she should do to address the situation.
 - What potential issues does this example of written individualized assistance raise?
 - Is this an example of appropriate written individualized assistance? Why or why not?
 - What organizational procedures or safeguards should be in place in this situation?



Written Assistance Scenario #4

- A parent posts on your Facebook group about her experiences with your state's child welfare/child protection system. Her school reported her to that system when she complained to the principal about him coming home with bruises, and when she refused to allow him to see the school psychologist. She asks what you would do in her situation. You respond on the facebook group with your recommendations including advising her to find a parenting class to attend.
 - What potential issues does this example of written individualized assistance raise?
 - Is this an example of appropriate written individualized assistance? Why or why not?
 - What organizational procedures or safeguards should be in place in this situation?



Written Assistance Dialogue Guide Implementation Questions

- What procedures should be in place to ensure that written individualized assistance:
 - Is of high quality?
 - Is timely and up-to-date?
 - Is not used to place parents in jeopardy?
 - Protects the reputation and standing of your parent center?
- What specific training do new staff need on written individualized assistance? Current staff?
- What kind of supervision would be most helpful to staff?
- What other thoughts do you have about how to ensure that you and your parent center provide appropriate, high quality, written individualized assistance?
- What questions do you still have about providing appropriate written individualized assistance? What would be most helpful to you in getting those questions answered?



UPL Dialogue Guide

Implementation Questions

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



Conclusion



Take-Aways!

- Develop, implement, & widely disseminate a policy re:
 - Written individualized assistance
 - Unauthorized practice of law
- Provide training to all staff & volunteers on policy, reason for policy, how policy is implemented & overseen, how they can ensure quality individual assistance & avoid UPL:
 - Initial training
 - Ongoing training
- Identify responsible party(ies) to oversee:
 - Written individualized assistance
 - Provisions to avoid UPL