

**UPL Opinion No. 187.**

**Lay Advocates: Activities Allowed Under UPRS; Compensation;  
Performance of Services When Represented Party Not Present;  
Representation of Education Authority's Rehabilitation Act Hearing.**

The Committee recently reviewed your request for an advisory Unauthorized Practice of Law Opinion involving a problem with lay advocates appearing before administrative law judges in connection with IDEA and Rehabilitation Act disputes with school boards. The Individual's With Disabilities Education Act (IDEA) is controlled by federal law and can be found at 20 U.S.C. § 1415. The Virginia Act is found at Va. Code §22.1-214(B). The particular case which triggered your inquiry also came under the Rehabilitation Act of 1972, which is located at 20 U.S.C. § 794 (referred to as § 504 of the Rehabilitation Act).

Under both the IDEA and Rehabilitation Act the states and localities must comply with federal law and regulations requiring due process hearings for parents having disputes with local school boards. 34 C.F.R. §300.58 permits the aggrieved parents in IDEA hearings to be represented by counsel or a lay advocate, provided the lay advocate is a person having special knowledge or training concerning the problems of children with disabilities. No certification or training program is administered to test or evaluate the competency or knowledge of a lay advocate. Regulations promulgated under the Rehabilitation Act do not explicitly mention lay advocates as the IDEA regulations do. See 34 C.F.R. §104.36 (requiring localities to establish procedural safeguards, including a right to hearing). In addition, Section 615 of the Rehabilitation Act leaves it to the states and localities to devise the appropriate procedural safeguards for adversary hearings, of which the right to be represented by counsel is a necessary component.

Our inquiry with the Department of Education in Washington, D.C. reveals that under federal law, it is permissible for a lay advocate to represent a parent in either IDEA or Rehabilitation Act cases, however, the federal regulations do not prohibit states from requiring representation by counsel only. Under the Virginia IDEA statutes, specifically §22.1-214(C), a party may be "represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of §54.1-3904 [prohibition against unauthorized practice of law]." Virginia Department of Education regulations permit a party to be "accompanied and advised" by an advocate "without [a] violation of the provisions of §54.1-3904 of the Code of Virginia as amended."

In the hypothetical situation you describe, the parent did not attend the due process hearing, but the lay advocate orally argued motions and objections, cross-examined witnesses, examined witnesses, presented documentary evidence and submitted written legal arguments. The attorney for the local school board objected to the advocate representing a party who was not present, giving strict interpretation to the "company and advise" language in the DOE regulation. You overruled the objection, giving liberal construction to the state statute and regulation. At the conclusion of the IDEA case, the Rehabilitation Act case was heard. After the hearing, the attorney for the local school board objected to the lay advocate representing the parent in the Rehabilitation Act case as

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being the unauthorized practice of law. No ruling was made as the case was dismissed on other grounds. The basis of school board' counsel' argument was that unlike IDEA, there is no specific authorization that permits non-lawyer representation in Rehabilitation Act cases.

First, you have asked the Committee to render an opinion regarding the scope of activities a lay advocate may perform in the course of "accompanying and advising" a parent in an IDEA hearing. Your inquiry requires the Committee to make legal determinations beyond its purview, including the application of federal and state law and regulations. The Committee believes that if state or federal law authorizes a non-lawyer to appear and represent a party before a tribunal, then such activity does not constitute the unauthorized practice of law. See UPC 1-1. For example, if a state statute allows non-lawyers who are regular employees of a partnership or corporation to represent their employer in General District Court, then the permissible scope on non-lawyer activity is governed by that state statute. See, e.g., Va. Code §16.1-88.03; UPL Op. 154.

Moreover, although representation of a party in an administrative law context normally constitutes the practice of law (UPC 9-1) a non-lawyer may represent a party before an administrative agency as permitted by the rules of such agency and reasonably within the scope of his practice authorized by such agency. UPR 9-102(A)(2). Thus, if a non-lawyer is qualified to practice before an administrative agency or tribunal, it is exclusively within the province of that particular agency or tribunal to establish the parameters of the non-lawyers practice before that agency.

As to your second inquiry regarding whether the lay advocate can accept compensation for his services, the Committee believes that this again raises legal or policy questions beyond its purview.

Your third inquiry is whether the lay advocate may perform any services when the party he or she is to accompany and advise is not present. This also raises a legal issue and would require the Committee to interpret and apply the language contained in a Department of Education regulation which is likewise beyond the purview of the Committee.

Your fourth inquiry regarding whether the lay advocate may represent a parent under the Rehabilitation Act likewise raises legal and policy considerations which the Committee believes are best left to the agency and/or the General Assembly.